ಕರ್ನಾಟಕ ವಿಧಾನ ಪರಿಷತ್ತು

ಚುಕ್ಕೆ ಗುರುತಿಲ್ಲದ ಪ್ರಶ್ನೆ ಸಂಖ್ಯೆ	:	1490
ಸದಸ್ಯರ ಹೆಸರು	:	ಶ್ರೀ ಕಾಂತ್‌ರಾಜು (ಬಿಎಂಎಲ್) (ಸ್ಥಳೀಯ ಸಂಸ್ಥೆಗಳ ಕ್ಷೇತ್ರ)
ಉತ್ತರಿಸುವ ದಿನಾಂಕ	:	17.03.2021.
ಉತ್ತರಿಸುವ ಸಚಿವರು	:	ಉಪ ಮುಖ್ಯಮಂತ್ರಿಗಳು ಲೋಕೋಪಯೋಗಿ ಇಲಾಖೆ

<table>
<tr><th>ಕ್ರಸಂ</th><th>ಪ್ರಶ್ನೆ</th><th colspan="3">ಉತ್ತರಗಳು</th></tr>
<tr><td>ಅ)</td><td>ಬೆಂಗಳೂರಿನಿಂದ ತುಮಕೂರು ಸಂಪರ್ಕಿಸುವ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ ಯಾವುದು ಅದು ಎಷ್ಟು ಕಿ.ಮೀ ಇದೆ ; ಏಕಪಥ ರಸ್ತೆಯಿಂದ ಯಾವಾಗ ಚತುಷ್ಪಥ ರಸ್ತೆಯನ್ನಾಗಿ ನಿರ್ಮಿಸ ಲಾಯಿತು</td><td colspan="3" rowspan="2">ಬೆಂಗಳೂರಿನಿಂದ ತುಮಕೂರು ಸಂಪರ್ಕಿಸುವ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿಯಾದ NH-4 (ಹೊಸ ಸಂ. NH-48) ಸರಪಳಿ ಕಿಮೀ. 10.00 ರಿಂದ 75.00 ಕಿಮೀ.ವರೆಗೆ ಒಟ್ಟು 65 ಕಿ.ಮೀ ಇರುತ್ತದೆ. ಇದರಲ್ಲಿ, ಕಿಮೀ.00.00 ರಿಂದ 10.00 ಕಿಮೀ.ವರೆಗೆ ಬೃಹತ್ ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ ವ್ಯಾಪ್ತಿಯಲ್ಲಿರುತ್ತದೆ. ಹಾಗೂ ಸರಪಳಿ ಕಿಮೀ.10.00 ರಿಂದ 75.00 ಕಿಮೀ.ವರೆಗೆ ಭಾರತೀಯ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ ಪ್ರಾಧಿಕಾರದ ವ್ಯಾಪ್ತಿಯಲ್ಲಿರುತ್ತದೆ. ಭಾರತೀಯ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ ಪ್ರಾಧಿಕಾರವು ಚತುಷ್ಪಥ ರಸ್ತೆಯನ್ನಾಗಿ ನಿರ್ಮಿಸಲಾಗಿದೆಯೆಂದು ಭಾರತೀಯ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ ಪ್ರಾಧಿಕಾರದವರು ತಿಳಿಸಿರುತ್ತಾರೆ. ಕಾಮಗಾರಿಗಳ ವಿವರಗಳನ್ನು ಅನುಬಂಧ-1 ರಲ್ಲಿ ನೀಡಲಾಗಿದೆ.</td></tr>
<tr><td>ಆ)</td><td>ಈ ಹೆದ್ದಾರಿಯನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿ ನಿರ್ವಹಣೆ ಮಾಡುತ್ತಿರುವ ಸಂಸ್ಥೆಗಳು ಯಾವುವು?</td></tr>
<tr><td>ಇ)</td><td>ಈ ಸಂಸ್ಥೆಗಳಿಗೆ ಯಾವ ದಿನಾಂಕದಿಂದ ಯಾವ ರೀತಿ ಕರಾರು ಮಾಡಿಕೊಳ್ಳ ಲಾಗಿದೆ, ಕರಾರಿನಲ್ಲಿರುವ ನಿಯಮ ಗಳಂತೆ ಈ ಸಂಸ್ಥೆಗಳು ರಸ್ತೆಯನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿ ನಿರ್ವಹಣೆ ಮಾಡುತ್ತಿವೆಯೇ. (ವಿವರವಾದ ಕರಾರಿನ ಪ್ರತಿಯೊಂದಿಗೆ ಮಾಹಿತಿ ನೀಡವುದು)</td><td colspan="3">ಭಾರತೀಯ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ ಪ್ರಾಧಿಕಾರವು ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ-4 ನ್ನು ಚತುಷ್ಪಥ ರಸ್ತೆಯನ್ನಾಗಿ ಗುತ್ತಿಗೆದಾರರ ಮುಖಾಂತರ ನಿರ್ಮಿಸಿದ್ದು, ಪ್ರಸ್ತುತ ಸದರಿ ರಸ್ತೆಯನ್ನು ಗುತ್ತಿಗೆದಾರರು ನಿರ್ವಹಣೆ ಮಾಡುತ್ತಿರುತ್ತಾರೆಂದು ಭಾರತೀಯ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ ಪ್ರಾಧಿಕಾರದವರು ತಿಳಿಸಿರುತ್ತಾರೆ. ಕರಾರಿನ ಪ್ರತಿಯನ್ನು ಅನುಬಂಧ-2 ರಲ್ಲಿ ನೀಡಲಾಗಿದೆ.</td></tr>
<tr><td rowspan="4">ಈ)</td><td rowspan="4">ಈ ಸಂಸ್ಥೆಗಳ ನಿರ್ವಹಣಾ ಅವಧಿ ಯಾವಾಗ ಮುಕ್ತಾಯವಾಗುತ್ತದೆ ಟ್ರಕ್ ವೇ-ಬೇ ಸರ್ವೀಸ್ ರಸ್ತೆ ಹಾಗೂ ಇತರೆ ಗಳನ್ನು ನಿರ್ಮಾಣ ಮಾಡಲಾಗಿದೆಯೇ</td><td colspan="3">ರಸ್ತೆ ನಿರ್ವಹಣಾ ಅವಧಿ ಹಾಗೂ ಟ್ರಕ್ ವೇ-ಬೇ ಹಾಗೂ ಕಾಮಗಾರಿಗಳಲ್ಲಿನ ಇನ್ನಿತರೆ ನಿರ್ಮಾಣ ವಿವರಗಳು ಈ ಕೆಳಕಂಡಂತಿವೆ.</td></tr>
<tr><td>ಯೋಜನೆಯ ಹೆಸರು</td><td>ನಿರ್ವಹಣ ಸಂಸ್ಥೆಗಳ ವಿವರ</td><td>ಟ್ರಕ್ ಲೇ ಬೈ ಸರ್ವಿಸ್ ರಸ್ತೆಗಳ ವಿವರ</td></tr>
<tr><td>ಬೆಂಗಳೂರು-ನೆಲಮಂಗಲ ವಿಭಾಗದ, ರಾ.ಹೆ-4</td><td>ಈ ಯೋಜನೆಯನ್ನು ಬಿ.ಓ.ಟಿ ಆಧಾರದದಲ್ಲಿ ಮೆ: ನವಯುಗ ಟೋಲ್ ವೇ ಪ್ರೈ.ಲಿ., ಬೆಂಗಳೂರು ರವರಿಗೆ ನಿರ್ಮಾಣ, ನಿರ್ವಹಣೆಯನ್ನು 2027ರ ವರೆಗೆ ವಹಿಸಲಾಗಿರುತ್ತದೆ ಹಾಗೂ ಸದರಿ ಯವರ ಕರಾರು ಒಪ್ಪಂದವನ್ನು ದಿನಾಂಕ:21.02.2021 ರಿಂದ ವಜಾಗೊಳಿಸಲಾಗಿದೆ. ಸಧ್ಯಕ್ಕೆ ಭಾರತೀಯ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ ಪ್ರಾಧಿಕಾರವು ನಿರ್ವಹಣೆ ಮತ್ತು ಟೋಲ್ ಸಂಗ್ರಹವನ್ನು ನಿರ್ವಹಿಸುತ್ತಿರುತ್ತಾರೆ.</td><td>ಭೂ ಸ್ವಾಧೀನ ಪ್ರಕ್ರಿಯೇಯ ತೊಂದರೆಯಿಂದ ಟ್ರಕ್ ಲೇ ಬೈ ನಿರ್ಮಿಸಿರುವುದಿಲ್ಲ ಹಾಗೂ ಒಪ್ಪಂದದ ಪ್ರಕಾರ ಸರ್ವಿಸ್ ರಸ್ತೆಯ ಸೇವೆಯನ್ನು ನೀಡಲಾಗಿದೆ.</td></tr>
<tr><td>ನೆಲಮಂಗಲ-ತುಮಕೂರು ವಿಭಾಗದ, ರಾ.ಹೆ-4</td><td>ಕರಾರು ಒಪ್ಪಂದದಂತೆ ಮೇ: ಜಾಸ್ ಟೋಲ್ ರೋಡ್ ಕಂ.ಲಿ., ಸಂಸ್ಥೆಯವರು ನಿರ್ಮಾಣ ಮಾಡಿ ನಿರ್ವಹಣೆ ಮಾಡುತ್ತಿರುತ್ತಾರೆ. ಈ ಯೋಜನೆಯನ್ನು ಬಿ.ಓ.ಟಿ ಆಧಾರದಲ್ಲಿ ತೆಗೆದುಕೊಳ್ಳಲಾಗಿದೆ. ಭಾರತೀಯ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ ಪ್ರಾಧಿಕಾರ ಮತ್ತು ಮೇ: ಜಾಸ್ ಟೋಲ್ ರೋಡ್ ಕಂ.ಲಿ., ರವರ ನಡುವೆ ಜೂನ್-2000ರಲ್ಲಿ ಕರಾರು ಮಾಡಲಾಗಿದೆ. ಕರಾರಿನ ಪ್ರಕಾರ ದಿನಾಂಕ:21.06.2021 ರಂದು ನಿರ್ವಹಣಾ ಅವಧಿ ಮುಕ್ತಾಯವಾಗಲಿದೆ.</td><td>ಕರಾರಿನಂತೆ ಒಂದು ಟ್ರಕ್ ಲೇ ಬೈ ಮತ್ತು 8 ಕಿ.ಮೀ ಸರ್ವಿಸ್ ರಸ್ತೆಯನ್ನು ನಿರ್ಮಾಣ ಮಾಡಲಾಗಿದೆ.</td></tr>
</table>

ಕ್ರಸಂ	ಪ್ರಶ್ನೆ	ಉತ್ತರಗಳು		
		ತುಮಕೂರು ಬೈಪಾಸ್ ರಸ್ತೆ–13 ಕಿ.ಮೀ. ರಾ.ಹೆ–4	ಈ ಯೋಜನೆಯನ್ನು ಮೆ: ಎನ್.ಕೆ.ಸಿ ರವರು ಇ.ಪಿ.ಸಿ ಆಧಾರದಲ್ಲಿ ನಿರ್ಮಾಣ ಮಾಡಿದ್ದು, ಮೇ: ಕೆ.ಎಲ್.ಆರ್.ಸಂಸ್ಥೆ ಯವರು ಸದರಿ ರಸ್ತೆಯನ್ನು ನಿರ್ವಹಣೆ ಮಾಡುತ್ತಿರುತ್ತರೆ. ಸರಪಳಿ. 62.00 ರಿಂದ ಸರಪಳಿ.75.00 ವರೆಗೆ ಗುತ್ತಿಗೆ ಕರಾರು ಅವಧಿ ಮಾರ್ಚ್–2021 ರಿಂದ ಜೂನ್–2021 ರವರೆಗೆ	ಕರಾರಿನಂತೆ ಇ.ಪಿ.ಸಿ ಗುತ್ತಿಗೆ ದಾರರು 6 ಪಥದ ರಸ್ತೆಯನ್ನು ಸರ್ವಿಸ್ ರಸ್ತೆಯೊಂದಿಗೆ ನಿರ್ಮಾಣ ಮಾಡಿರುತ್ತಾರೆ. ಆದರೆ ಯಾವುದೇ ಟ್ರಕ್ ಲೇ ಬೈ ನಿರ್ಮಾಣ ಮಾಡಿರುವುದಿಲ್ಲ.
ಉ)	ಟೋಲ್‌ಗಳಲ್ಲಿ ವಿ.ಐ.ಪಿ ಮತ್ತು ಆಂಬುಲೆನ್ಸ್ ವಾಹನಗಳು ಸರಾಗವಾಗಿ ಸಂಚರಿಸಲು ತೊಂದರೆಯಾಗುತ್ತಿರುವುದು ಸರ್ಕಾರದ ಗಮನಕ್ಕೆ ಬಂದಿದೆಯೇ?	ಟೋಲ್‌ಗಳಲ್ಲಿ ವಿ.ಐ.ಪಿ ಮತ್ತು ಆಂಬುಲೆನ್ಸ್ ವಾಹನಗಳು ಸರಾಗವಾಗಿ ಸಂಚರಿಸಲು ಸ್ಥಳೀಯ ಸಾರ್ವಜನಿಕರು ತೊಂದರೆಯುಂಟು ಮಾಡುತ್ತಿರುವುದು ಗಮನಕ್ಕೆ ಬಂದಿರುತ್ತದೆ. ಮುಂದುವರೆದು ಫಾಸ್ಟ್ಯಾಗ್ ಬಳಕೆದಾರರ ಪ್ರಮಾಣ 93%ರಷ್ಟು ಹೆಚ್ಚಾಗಿದ್ದು, ಈ ಸಮಸ್ಯೆ ಇಳಿಮುಖವಾಗಿರುತ್ತದೆಂದು ಭಾರತೀಯ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿ ಪ್ರಾಧಿಕಾರದವರು ತಿಳಿಸಿರುತ್ತಾರೆ.		

ಕಡತ ಸಂಖ್ಯೆ: ಲೋಇ 92 ಸಿಎನ್‌ಹೆಚ್ 2021 (ಇ)

(ಗೋವಿಂದ.ಎಂ.ಕಾರಜೋಳ)
ಉಪ ಮುಖ್ಯಮಂತ್ರಿ,
ಲೋಕೋಪಯೋಗಿ ಇಲಾಖೆ

ಅನುಬಂಧ - 1

NATIONAL HIGHWAYS AUTHORITY OF INDIA
Regional Office, Bangalore

Annexure-I

Sl. No.	Name of the Project	NH. No.	Mode	Total Length	Name of the Concessionaire	TPC (in crores)	Date of Award	Date of Agreement	Date of Start	Schedule date of Completion	Actual / Likely date of completion	Remarks
Completed Projects												
3	Construction of Access Controlled Highway from Km 10/00 to Km 29/50 on Bangalore - Nelamangala section of NH 4	4 (Nwq No. 48)	BOT (Toll)	19.500	**M/s. NBTPL**	445.000	01.03.2007	09.05.2007 (between NHAI & NBTPL) copy of Agreement is enclosed separately	05.11.2007	Nov,2009	11.12.2010	Project Completed
9	4 laning of Nelamangala-Tumkur Section from 29.50 to Km 62.00 of NH-4	4 (Nwq No. 48)	BOT	32.5	**M/s. JAS Toll Road Co. Ltd.,**	155	-	28.06.2001 (between NHAI & JAS Toll) copy of Agreement is enclosed separately	Jun-02	Feb-04	Apr-04	Project Completed
3	Tumkur Bypass Section from Km 62.00 to Km 75.00 of NH-4	4 (Nwq No. 48)	EPC	13	M/s. NKC (EPC Contractor / Construction Agency) M/s. KLR Consturctions (Maintenance Agency)	145	-	13.05.2009 (between NHAI & NKC) Copy of Agreement is enclosed separately	29.06.2009	Sep-10	31.12.2010	Completed

ಅನುಬಂಧ - 2



INDIA NON JUDICIAL

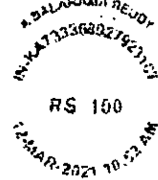
Government of Karnataka

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Certificate No.	:	IN-KA73336892792316T
Certificate Issued Date	:	12-Mar-2021 10:52 AM
Account Reference	:	NONACC (FI)/ kaksfcl08/ NAGASANDRA1/ KA-BA
Unique Doc. Reference	:	SUBIN-KAKAKSFCL08219795348309317
Purchased by	:	A BALARAMA REDDY
Description of Document	:	Article 12 Bond
Description	:	CONTRACT AGREEMENT
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	NHAI RO BENGALURU
Second Party	:	A BALARAMA REDDY
Stamp Duty Paid By	:	A BALARAMA REDDY
Stamp Duty Amount(Rs.)	:	100 (One Hundred only)

For SOUNDARYA SOUHARDHA CREDIT CO-OPERATIVE LIMITED

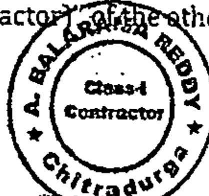
Authorised Signatory



Please write or type below this line

Contract Agreement

This agreement made on **12th day of March, 2021** between **National Highways Authority of India (NHAI), Regional Office**, Bengaluru - Tumkur Road (NH-4), M. S. Ramaiah Enclave, Beside Nagasandra Metro Station, Bengaluru - 560073 [herein after called "the Employer" of the one part] and **A. Balarama Reddy**, #178, Srujana Nilaya, S R layout, Chitradurga - 577501 (here in after called "the Contractor" of the other part.





Statutory Alert:
1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
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3. In case of any discrepancy please inform the Competent Authority.



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India
(Ministry of Road Transport and Highways)
कर्नाटक क्षेत्र, क्षेत्रीय कार्यालय, बेंगलुरु
Karnataka Region, REGIONAL OFFICE, BENGALURU
बेंगलूरु – तुमकूर सड़क (एन.एच–४), एम. एस. रामय्या इंकलेव, नागसंद्रा मेट्रो स्टेशन के बगल में, बेंगलूरु –५६० ०७३.
Bengaluru – Tumakuru Road (NH-4), M.S. Ramaiah Enclave, Beside Nagasandra Metro Station, Bengaluru - 560 073

Tele : 080 – 28397156
: 080 – 28397171
Fax : 080 – 28377171
Email : robangalore@nhai.org
ronhaibangalore@gmail.com



NHAI/RO-BNG/11018/Tender/2020-21/5336 Date: 12.03.2021

To,
Sh. A. Balarama Reddy,
178, Srujana Nilaya, S R layout,
Chitradurga – 577501

Notice to proceed with the work

Sub: Routine Maintenance and Special Repairs of **Bengaluru - Nelamangala Section** from Km.10.000 to Km.29.500 of NH-4 (New NH-48) in the State of Karnataka- Reg.

Ref: 1. Contract Agreement executed on 12.03.2021
2. NIT No.48/NHAI/RO-BNG/11018/Tender/2020-21 dt.08.01.2021

*****

Sir,

Pursuant to your furnishing the requisite Performance Security including Additional Performance Security of **Rs.37,93,000/-** as stipulated in ITB Clause 33 of RFP and for signing the Contract Agreement for the Routine Maintenance of the subject work for the quoted amount of **Rs.6,32,07,903/-** (Rupees Six Crore Thirty Two Lakh Seven Thousand Nine Hundred and Three only) excluding GST at 12%.

The copy of the Contract Agreement executed on **12.03.2021** is herewith enclosed and you are hereby requested to proceed with the Routine Maintenance of the subject work in due consultation with PD, PIU-Bengaluru in accordance with the conditions of Contract Agreement.

Thanking you,

Yours faithfully,

Encl: Copy of Agreement

(R.K. Suryawanshi)
Regional Officer

Copy to:
1. Sh. Akil Ahmad, GM (Tech.), NHAI HQ, New Delhi along with a copy of Contract Agreement - for information.
2. PD, PIU-Bengaluru along with a copy of Contract Agreement – for information and necessary action.

AND WHEREAS the Employer invited bids from eligible bidders for the execution of certain works, viz **Routine Maintenance and Special Repairs of Bengaluru - Nelamangala Section from Km.10.000 to Km.29.500 of NH-4 (New NH-48) in the State of Karnataka.**

AND WHEREAS pursuant to the bid submitted by the Contractor, vide Technical Bid dated **21.01.2021** (here in after referred to as the "BID" or "OFFER") for the execution of works, the Employer by his letter of acceptance **No.NHAI/RO-BNG/11018/Tender/2020-21/5011 dt.26.02.2021** accepted the offer submitted by the Contractor for the execution and completion of such works and remedying of any defects thereon, at a cost of **Rs.6,32,07,903/-** (Rupees Six Crore Thirty Two Lakh Seven Thousand Nine Hundred and Three only) excluding GST at 12%, on terms and conditions in accordance with the documents listed in para 2 below.

AND WHEREAS the Contractor by a deed of undertaking dated **21.01.2021** has agreed to abide by all the terms of the bid, including but not limited to the amount quoted for the execution of Contract, as stated in the bid, and also to comply with such terms and conditions as may be required from time to time.

AND WHEREAS the contractor has agreed to undertake such works and has furnished a performance security pursuant to clause 33 of the instructions to bidders (Section-I).

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this agreement words and expressions shall have the same meaning as are respectively assigned to them in the conditions of contract hereinafter referred to;
2. the following documents shall be deemed to form and be read and construed as part of this agreement viz.

   (a) Agreement,
   (b) Letter of Acceptance
   (c) Contractor's Bid including Financial Bid Form,
   (d) Contract Data,
   (e) Conditions of Contract
   (f) Technical Specifications,
   (g) Drawings, if any
   (h) Implementation Manual and Maintenance Intervention Level
   (i) Scope of Work
   (j) Bill of Quantities, and
   (k) Any other document listed in the Contract Data.

3. The foregoing documents shall be construed as complementary and mutually explanatory one with another. Should any ambiguity or discrepancy be noted then the order of precedence of these documents shall be subject to the order as listed above and interpreted in the above order of priority.

4. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the works and remedy any defects therein in conformity in all respects with the provisions of the contract.

5. the employer hereby covenants to pay the contractor in consideration of the execution and completion of the works and remedying of defects therein, the contract price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.





IN WITNESS WHEREOF the parties here to have caused this agreement to be executed the day and year above written. Signed, sealed and delivered by the said Employer through his Authorized Representative and the said Contractor through his Power of Attorney holder.

FOR AND ON BEHALF OF
National Highways Authority of India

By



(R.K. Suryawanshi)
Regional Officer
National Highways Authority of India
Regional Office
Bengaluru - Tumkur Road (NH-4),
M. S. Ramaiah Enclave,
Beside Nagasandra Metro Station,
Bengaluru - 560073

Witness:

Signature: V. Padmaja

Name: V. PADMAJA

Address: NHAI - Manager (Tech)
RO - Bangalore
560073

FOR AND ON BEHALF OF

A. Balarama Reddy

By



(A. Balarama Reddy)
Class I Contractor
178, Srujana Nilaya, S R layout,
Chitradurga - 577501

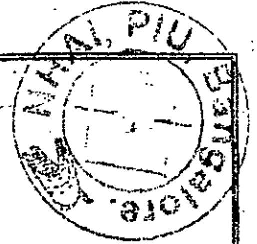
Witness:

Signature:

Name: Prakash

Address: Chitradurga
Joji matt Road
2nd cross - door no 438





NATIONAL HIGHWAYS AUTHORITY OF INDIA

(Ministry of Shipping, Road Transport & Highways, Govt. of India, New Delhi)

Concession Agreement

BETWEEN

NATIONAL HIGHWAYS AUTHORITY OF INDIA

(Ministry of Shipping, road Transport & Highways)

AND

NAVAYUGA BENGALOORU TOLLWAY PVT. LTD

VOLUME I/IV

May 2007

Design, Engineering, Finance, Construction, Operation and Maintenance of access controlled highway project of Bangalore -Nelamangala section of NH:4 from km 10.000 to km 29.5000 in the State of Karnataka on Build, Operate and Transfer (BOT) Basis



ली DELHI C 702994

CONCESSION AGREEMENT

This Agreement is entered into on this the 9th day of May 2007 BETWEEN

13.5.1 **NATIONAL HIGHWAYS AUTHORITY OF INDIA,** a statutory body constituted under the provisions of the National Highways Authority of India Act, 1988, and having its principal office at G-5&6, Sector-10, Dwarka, New Delhi-110075 (hereinafter referred to as "NHAI" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part,

AND

13.5.1 **Navayuga Bengalooru Tollway Private Limited,** a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at #1259,Lakshmi Towers, Road No. 36, Jubilee Hills , Hyderabad-500 033 (hereinafter referred to as the "Concessionaire" or "Company" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Other Part.

WHEREAS

A. The Government of India in the Ministry of Shipping, Road Transport and Highways, earlier Ministry of Road Transport & highways, (hereinafter referred to as

"MoSRT&H") had entrusted to the NHAI, Km 10.000 to Km 29.500 of Bangalore Nelamangala Section of NH-4 for development and maintenance. NHAI has decided to take up capacity improvement of the existing carriageways from km 10.000 to km 29.5000, on the Bangalore - Nelamangala section of National Highway No. 4 (NH-4) in the State of Karnataka on Design, Engineering, Finance, Construction, Operation and Maintenance of Access controlled highway project of Bangalore - Nelamangala section of National Highway No. 4 from km 10.000 to km 29.500 on BOT basis as per scope of work specified in Schedule B and Schedule C.

B. NHAI had accordingly invited Proposals under a single stage process from Bidders for qualification and prescribed the commercial terms and conditions for selection of a successful Bidder under its Request For Proposal, inter alia, for Design, Engineering, Finance, Construction, Improvement, Operation and Maintenance of the above said section of NH-4 in the State of Karnataka referred to in Recital 'A' above on BOT basis subject to and on the terms and conditions contained in the RFP (more particularly described in Schedules A, B and C of the Concession Agreement).

C. NHAI had, pursuant thereto qualified the M/s Navayuga Engineering company Limited (Company) for undertaking, inter alia, the work referred to in Recital 'A' above on BOT basis.

D. After qualification of the Company, NHAI accepted their Bid and issued its Letter of Acceptance NoNHAI/GM(MC-III)/NH-4BNG-NEL/61 dated 01/03/2007 ("LOA") to the Company requiring, inter alia, the execution of this Concession Agreement and submission of Performance Security for the performance of its obligations under this Concession Agreement.

E. In pursuance of the LOA, the Concessionnaire has furnished a Performance Security in the form of a bank guarantee issued by the State Bank of India, Commercial Branch, Bank Street, Hyderabad in a sum of Rs. 22,25,00,000.00 (Rupees Twenty Two Crores Twenty Five lakhs only) valid for the period 17.03.2007 to 16.12.2007.

F. The Company has also promoted and incorporated the Concessionaire as a limited liability company to enter into this Concession Agreement pursuant to the LOA for undertaking, inter alia, the Design, Engineering, Financing, Construction, Operation and Maintenance of the Project, as defined hereinafter on BOT basis as referred to in Recital 'A' and to fulfill other obligations of the Concessionaire pursuant to the LOA and has requested NHAI to accept the Concessionaire as the entity which shall undertake and fulfill and perform the obligations and exercise the rights of the Company under the LOA, including the obligation to enter into this Concession Agreement for the Design, Engineering, Financing, Construction, Operation and Maintenance of the Project on BOT basis.







भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India
(Ministry of Road Transport and Highways)
कर्नाटक क्षेत्र, क्षेत्रीय कार्यालय, बेंगलुरु
Karnataka Region, REGIONAL OFFICE, BENGALURU
बेंगलूरु - तुमकूर सड़क (एन.एच-४), एम. एस. रमय्या इंकलेव, नागसंद्रा मेट्रो स्टेशन के बगल में, बेंगलूरु -५६० ०७३.
Bengaluru-Tumakuru Road (NH-4), M.S. Ramaiah Enclave, Beside Nagasandra Metro Station, Bengaluru - 560 073

Tele : 080 - 28397156
: 080 - 28397171
Fax : 080 - 28377171
Email : robangalore@nhai.org
ronhaibangalore@gmail.com



NHAI/RO-BNG/13020/Tender/2020-21/4735 Date: 15.02.2021

To,
The Authorized Signatory,
M/s. K.L.R Constructions.
D. No.81-26-3, Venkateshwara Nagar,
Rajamundry, East Godavari District,
Andhra Pradesh-533103

Sub: Short Term Operation and Maintenance for Four Months of **Tumkur - Bypass** from Km.62.00 to Km.75.00 (13.00 Kms) of NH-48 (Old NH-4) in the State of Karnataka- **Issue of LOA** - Reg.

Ref:
1. NHAI HQ letter No.NHAI/KNT/MISC/LOA/O&M/Tumkur Bypass/2020-21/10022101 dated 10.02.2021
2. T/o letter No.NHAI/RO-BNG/RoadSafety/Tender/2020-21/4445 dt.02.02.2021
3. NIT No.41/NHAI/RO-BNG/13020/Tender/2020-21 dt.14.12.2020

*****

Sir,

Based on your bid submitted on 28.12.2020 in compliance of bidding document of NHAI for execution of the above said subject work, it is hereby notified that as per the recommendation of this office vide letter cited 2nd above, Competent Authority of HQ vide letter cited 1st above has accorded approval for issuance of LOA to the L1 bidder **M/s. KLR Constructions. Andhra Pradesh** for the quoted amount of **Rs.45,25,977/-** excluding GST at 12% along with total Performance Security including Additional Performance Security **Rs.2,71,558/-** (Rs.1,35,779/-+ Rs.1,35,779/-). As such, your bid for a contract price of **Rs.45,25,977/-** (Rupees Forty Five Lakh Twenty Five Thousand Nine Hundred and Seventy Seven only) excluding GST at 12%, has been accepted for and on behalf of NHAI.

Hence, you are hereby requested to furnish Performance Security including Additional Performance Security in the form of BG (Format enclosed) as detailed in para 33.2 of ITB for an amount equivalent to **Rs.2,71,558/-** (Rupees Two Lakh Seventy One Thousand Five Hundred and Fifty Eight only) within 05 days as per provisions of clause 33.1 of ITB of the bid document and the BG shall be valid for a period of 28 days after the expiry of Defect Liability period of **12 months** and sign the contract agreement, failing which the actions as stipulated in clause 33.3 of ITB shall be taken.

Thanking you,

Yours faithfully,

(R.K. Suryawanshi)
Regional Officer

Copy to: PD, PIU-Chitradurga - for information.



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India
(Ministry of Road Transport and Highways)
जी-5 एवं 6, सेक्टर 10, द्वारका, नई दिल्ली 110075
G-5 & 6, Sector-10, Dwarka, New Delhi-110075

फोन / Phone : 91-11-25074100/200/4200
फैक्स / Fax : 91-11-25093507 / 25093514

NHAI/KNT/MISC/LOA/O&M/Tumkur Bypass/2020-21/1002210/ Date: 10.02.2021

To,
The Regional Officer,
Regional Office - Bengaluru,
National Highways Authority of India,
Sy. No. 13, 14th Km., Near Deepak Bus Stop,
Nagasandra, M.S. Ramaiah Enclave,
Bengaluru - Tumkur Road (NH-4),
Bengaluru - 560073

Sub: Short Term Operation and Maintenance for Four Months of Tumkur - Bypass from Km.62.00 to Km.75.00 (13.00 Kms) of NH-48 (Old NH-4) in the State of Karnataka- Approval for issue of LOA - Reg.

Sir,

This is with reference to your letter no. NHAI/RO-BNG/Road Safety/Tender/2020-21/4445 dated 02.02.2021 vide which it has requested for approval of the Competent Authority for issue of LOA to the L1 bidder M/s. KLR Constructions. Andhra Pradesh for the quoted amount of Rs.45,25,977/- excluding GST at 12%.

2. In this regard, competent authority has accorded approval for issuance of LOA to the L1 bidder M/s KLR Constructions, Andhra Pradesh for the quoted amount of Rs. 45,25,977/- excluding GST at 12% along with the total Performance Security including Additional Performance Security of Rs.2,71,558/- (Rs.1,35,779/-+ Rs.1,35,779/-).

This is for your information and necessary action please.

Yours faithfully,

(Akil Ahmad)
General Manager (T) - KNT



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India
(Ministry of Road Transport and Highways)
कर्नाटक क्षेत्र, क्षेत्रीय कार्यालय, बेंगलुरु
Karnataka Region, REGIONAL OFFICE, BENGALURU
Bengaluru – Tumakuru Road (NH-4), M.S. Ramaiah Enclave, Beside Nagasandra Metro Station, Bengaluru - 560 073
Tele : 080 – 28397155
: 080 – 28397171
Fax : 080 – 28377717
Email : robangalore@nhai.org
rcnhaibangalore@gmail.com



NHAI/RO-BNG/13020/Tender/2020-21/4445 Date: 02.02.2021

To
Sh. Akil Ahmad
General Manager (Tech.) - (KTK),
National Highways Authority of India,
G – 5 & 6, Sector – 10, Dwarka,
New Delhi - 110075

Sub: Short Term Operation and Maintenance for Four Months of **Tumkur - Bypass** from Km.62.00 to Km.75.00 (13.00 Kms) of NH-48 (Old NH-4) in the State of Karnataka- **Approval for issue of LOA** - Reg.

Ref:
1. Minutes of the Bid Evaluation Committee on Financial Proposals dt.02.02.2021
2. NHAI/Policy Guidelines/Finance & Accounts/2021 No.3.1.30/2021 dated 20.01.2021
3. T/o letter No.NHAI/RO-BNG/13020/Tender/2020-21/4124 dt.18.01.2021
4. Minutes of the Bid Evaluation Committee on Technical Proposals dated 18.01.2021
5. NIT No.41/NHAI/RO-BNG/13020/Tender/2020-21 dt.14.12.2020
6. NHAI Policy Circular No.3.1.27 dated 19.11.2020 vide Office Memorandum No.F.9/4/2020-PPD dated 12.11.2020

*****

Sir,

The online Tender was invited vide notification cited 5th above for the subject work and for which the following bidders have submitted the Technical Proposals on the scheduled date of **28.12.2020**.

1. M/s. Arjunvaishnavi Infrastructure & Development Pvt. Ltd. Dharwad
2. M/s KLR Constructions, Andhra Pradesh

The members of the Bid evaluation Committee have opened the Technical Bids on the Scheduled date of **27.11.2020** through online and accordingly the Members of the Committee have evaluated the Technical Bids of the above said Bidders in detail as per eligibility criteria of RFP with respect to the details furnished by the bidders. As per the Minutes cited 4th above, above said 02 (two) bidders are Technically Responsive and accordingly recommended for opening of the Financial bids of above said 02 (two) technically responsive bidders.

As per this office letter cited 3rd above, Competent Authority has accorded approval for opening the Financial Bids on **19.01.2021** and accordingly the Financial bids of the above said bidders were opened on the said date and the details of Financial proposals are as below:

Contd....2

[illegible] attached by the bidders

[illegible]	[illegible]	[illegible]	M/s. KDM Construction
[illegible]	[illegible]	[illegible]	[illegible]

[illegible] Rs. [illegible] 135.77/-

[illegible] by [illegible] M/s. KDM Construction [illegible] Pvt. [illegible]

[illegible] .77/- [illegible]

[illegible] C [illegible]

[illegible] M/s. KDM Construction [illegible] 77/- [illegible]

[illegible] KDM Construction [illegible] 77/- [illegible] 12

[illegible]

Yours faithfully,

[illegible]

FORM OF BANK GUARANTEE FOR PERFORMANCE SECURITY

To

National Highways Authority of India
G5 & 6, Sector – 10
Dwarka
New Delhi – 110075

WHEREAS.................................. (name and address of contractor) hereinafter called "the contractor" has undertaken, in pursuance of Letter of Acceptance No. .... Dated .... to execute.......................... (name of Contract and brief description of Works) (hereinafter called "the contract").

AND WHEREAS it has been stipulated by you in the said contract that the Contractor shall furnish you with a Bank Guarantee for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee:

NOW THEREOF we hereby affirm that we are the guarantor and responsible to you on behalf of the Contractor, up to a total of Rs................. (amount of guarantee) (Rupees....................................... (in words), , and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of .... (amount of guarantee) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the contract or of the works to be performed there under or of any of the contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until 28 days from the date of expiry of the Defects Liability Period.

This guarantee shall also be operatable at our .... branch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension/ renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

Notwithstanding anything contained herein before, our liability under this guarantee is restricted to Rs. ________________ (Rs.__________in words) and the guarantee shall remain valid till ___________________. Unless a claim or a demand in writing

is served upon us on or before ____________ all our liability under this guarantee shall cease.

The guarantor / bank hereby confirms that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of NHAI. The details are as follows:

1. **Beneficiary Name:** NHAI, RO-Bangalore
2. **Bank Name and Bank Address:** Syndicate Bank, Peenya Branch, Bangalore, Pin code – 560057
3. **Bank A/c No.** 04551010008173
4. **Bank IFSC Code:** SYNB0000455

Signature and seal of the Guarantor with Name, Designation, Employee Code Number & Telephone Number..

Name of the Issuing Bank/ Branch ....Name of the Controlling Branch/Bank.....

Address & Telephone Number................................Address & Telephone Number............

Date..............................

In the presence of (if this is to be witnessed as per bank's policy).......................................

1...
(Name, Address & Occupation)

2...
(Name, Address & Occupation)

An amount shall be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract including additional security for unbalance bids, if any and denominated in Indian Rupees.

CONCESSION AGREEMENT

FOR

NELAMANGALA - TUMKUR BOT PROJECT

From Km 29.5 To Km 62.0

Of NH – 4, in the State of Karnataka

Signed on June 28, 2001

Between

National Highways Authority Of India

And

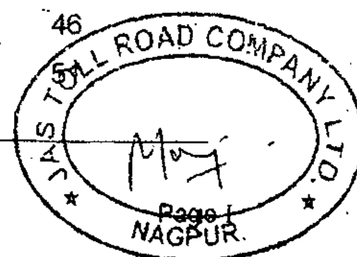
JAS Toll Road Company Limited.

Vol. I

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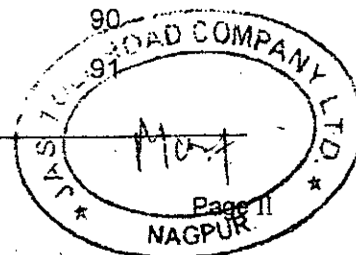
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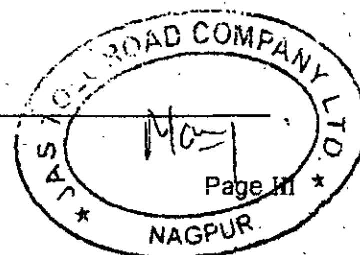
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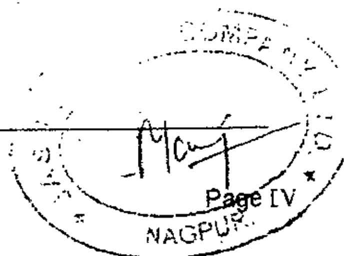


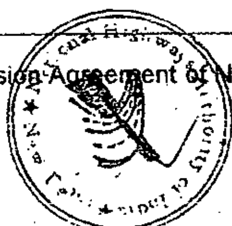



National Highways
New Delhi


ROAD COMPANY LTD.
NAGPUR

Schedules: Volume 2





6 100Rs.



चंद्रकांत रघटाटे
स्टॅम्प व्हेंडर
मोवी नं. ३, सितावर्डी, नागपूर

No 20323 Date 27/6/2001 Rs 100
Name Jas Toll Road Co.

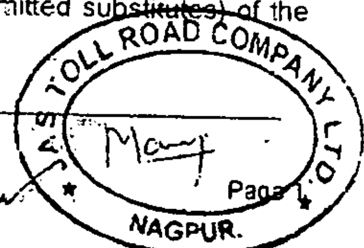
CONCESSION AGREEMENT

This Agreement is entered into on this the 28th day of June 2001 BETWEEN

1. NATIONAL HIGHWAYS AUTHORITY OF INDIA, a statutory body constituted under the provisions of the National Highways Authority of India Act, 1988, and having its principal office at No.1, Eastern Avenue, Maharani Bagh, New Delhi 110 065 (hereinafter referred to as "NHAI" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of One Part,

AND

2. JAS TOLL ROAD COMPANY LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at F-8, MIDC Industrial Area, Hingna, Nagpur – 440 016 (hereinafter referred to as the "Concessionaire" or "Company" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Other Part.



WHEREAS

A. The Government of India in the Ministry of Road Transport & Highways (hereinafter referred to as "MORT&H") had authorised NHAI for widening and rehabilitation of the existing 2-Lanes from km. 29.5 to km. 62 on the Nelamangala-Tumkur Section of the National Highway No.4 ("NH-4") in Karnataka, India to four lane divided carriageway and its operation and maintenance through a concession on build, operate and transfer ("BOT") basis and has by its Notification no. S.O.78 (E) dated 4th February, 1999, issued pursuant to Section 11 of the National Highways Authority of India Act, 1988 vested the said stretch of NH-4 in NHAI as set forth in the said Notification dated 4th February, 1999.

B. NHAI had accordingly invited Proposals for shortlisting of bidders for the aforesaid under its Notice inviting Proposals dated 31st October 2000 ("the Global Tender Notice"), inter alia, for the design, engineering, financing, procurement, construction, operation and maintenance of the above section of NH-4 on BOT basis subject to and on the terms and conditions contained in the Tender Notice and had pursuant thereto shortlisted certain bidders including, inter alia, the consortium comprising Jayaswals Neco Limited, SREI International Finance Limited and Jayaswals Ashoka Infrastructure Private Limited (collectively the "Consortium") with Jayaswals Neco Limited and SREI International Finance Limited as its Lead Technical Member and as the Lead Financial Member respectively.

C. NHAI had, pursuant to the Tender Notice, laid down and prescribed the technical and commercial terms and conditions and had invited bids from the bidders shortlisted pursuant to the Tender Notice for undertaking, inter alia, the work referred to in Recital 'A' above on BOT basis.

D. After evaluation of the bids so received NHAI accepted the Bid of the Consortium and issued its Letter of Acceptance No. NHAI/13011/20/97-PI/Vol.II, dated May 02, 2001 ("LOA") to the Consortium requiring, inter alia, the execution of this Concession Agreement.

E. The Consortium has promoted and incorporated the Concessionaire as a limited liability company to enter into this Concession Agreement pursuant to the LOA for undertaking, inter alia, the design, engineering, financing, procurement, construction, operation and maintenance of the Project Highway, as defined hereinafter, on BOT basis as referred to in Recital 'A' and to fulfill other obligations of the Concessionaire pursuant to the LOA and has requested NHAI to accept the Concessionaire as the entity which shall undertake and fulfill and



perform the obligations and exercise the rights of the Consortium under the LOA, including the obligation to enter into this Concession Agreement for the design, engineering, financing, procurement, construction, operation and maintenance of the Project Highway on BOT basis.

F. NHAI has agreed to the said request of the Consortium and has accordingly agreed to enter into this Concession Agreement with the Concessionaire pursuant to the LOA for, inter alia, the design, engineering, financing, procurement, construction, operation and maintenance of the said Project Highway on BOT basis.

G. It is deemed necessary and expedient to enter into this Agreement to record the terms of the said Agreement between the Parties.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:



1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"Accounting Year" means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.

"Additional Facilities" means the facilities which the Concessionaire may provide or procure for the benefit of the users of the Project Highway and which are (i) in addition to the Project Facilities, and (ii) not situated on the Site.

"Affected Party" shall have the meaning set out in Clause 29.1.

"Agreement" means this Agreement, the Schedules 'A' through 'X' hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.

"Applicable Laws" means all laws, promulgated or brought into force and effect by GOI or GOK including regulations and rules made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

"Applicable Permits" means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the design, engineering, financing, procurement, construction, operation and maintenance of the Project Highway during the subsistence of this Agreement.

"Appointed Date" means the date on which Financial Close is achieved in accordance with Article XXII and shall be deemed to be the date of commencement of the Concession Period.

"Arbitration Act" means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof as in force from time to time.

"Associates" means in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such



Party or Consortium Member. As used in this definition, the expression "control" means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

"Bank" means a bank incorporated in India and having a minimum net worth of Rs.10, 000 million (Rupees ten thousand million) and having a branch in the proximity of the Project or at any other place acceptable to NHAI.

"Bid" means the documents in their entirety comprised in the bid submitted by the Bidder in response to the Tender Notice in accordance with the provisions thereof.

"Bidder" means the Consortium referred to in Recital 'D' above.

"COD" means the commercial operations date of the Project Highway and shall be the date on which the Independent Engineer has issued the Completion Certificate or the Provisional Certificate upon completion of four-laning of the Project Highway in accordance with the Agreement.

"Change in Law" means the occurrence of any of the following after the date of this Agreement:

i. the enactment of any new Indian law;

ii. the repeal, modification or re-enactment of any existing Indian law;

iii. the commencement of any Indian law which has not entered into effect until the date of this Agreement

iv. a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement; or

v. any change in the rates of any of the Taxes.

"Change of Scope" shall have the meaning ascribed thereto in Clause 17.1.

"Company" means the Company acting as the Concessionaire under this Agreement.



"Completion Certificate" means the Certificate issued by the Independent Engineer pursuant to Clause 16.4.

"Concession" shall have the meaning ascribed thereto in Article III.

"Concession Fee" shall have the meaning ascribed thereto in Article VII.

"Concession Period" means the period beginning from the Appointed Date and ending on the Termination Date.

"Concessionaire" means JAS Toll Road Company Limited and its successors and substitutes expressly approved in writing by NHAI.

"Consortium" shall have the meaning set forth in Recital 'B' above.

"Consortium Members" means Jayaswals Neco Limited, SREI International Finance Limited and Jayaswals Ashoka Infrastructure Private Limited.

"Construction Period" means the period beginning from the Appointed Date and ending on the COD.

"Construction Works" means all works and things necessary to complete the Project Highway for use of the traffic and other users thereof in accordance with this Agreement.

"Contractor" means the contractor or contractors, if any, with whom the Concessionaire has entered into all or any of the Project Agreements.

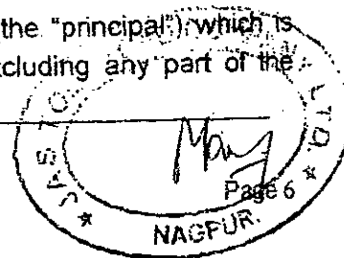
"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and upon failing of which the Agreement may be terminated by the other Party.

"Damages" shall have the meaning ascribed thereto in Clause 1.2(p).

"Debt Due" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding and payable to the Senior Lenders under the Financing Documents:

(i) the principal amount of the debt provided by the Senior Lenders under the Financing Documents for financing the Project (the "principal") which is outstanding as on the Termination Date but excluding any part of the





principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of NHAI; and

(ii) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (i) above upto the date preceding the Termination Date but excluding (a) any interest, fees or charges that had fallen due one year prior to the Termination Date, and (b) penal interest or charges payable under the Financing Documents to any Senior Lender.

"Debt Service Payments" means the sum of all principal and interest payments due and payable in an Accounting Year to the Senior Lenders under the Financing Documents.

"Development Period" means the period from the date of this Agreement until the Appointed Date.

"Dispute" shall have the meaning set forth in Clause 39.1(a).

"Dispute Resolution Procedure" means the procedure for Dispute resolution set forth in Article XXXIX.

"Divestment Requirements" means the obligations of the Concessionaire and NHAI for and in respect of the Termination of this Agreement as set forth in Article XXXIII.

"Document" or "Documentation" means documentation printed or in written form, tapes, discs, drawings, computer programmes, writings, reports, photographs, cassettes, or expressed in any other written, audio or visual form.

"Drawings" means all the drawings, calculations and documents pertaining to the Project Highway as set forth in Schedule 'I' and shall include "as built" drawings of the Project Highway.

"EPC Contract" means contract or contracts entered into by the Concessionaire with one or more Contractors for the design, engineering, procurement of materials and equipment, construction, and completion of the Project Highway in accordance with the provisions of this Agreement.

"Emergency" means a condition or situation that is likely to endanger the security of the individuals on or about the Project Highway including users thereof or

which poses an immediate threat of material damage to any of the Project Assets.

"Encumbrances" means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Highway, physical encumbrances and encroachments on the Site where applicable herein.

"Equity" means the sum expressed in Indian Rupees representing the equity share capital of the Company and shall include the funds advanced by any Member of the Consortium or by any of its shareholders to the Concessionaire company for meeting the equity component of the Total Project Cost. Provided, however, that for purposes of computing Termination Payments under this Agreement, Equity shall be reckoned as an amount that is arrived at after excluding from the equity share capital of the Company the following viz. (a) Equity Support, if any, and (b) the sum by which the capital cost of the Project Highway as stated by the Concessionaire for purposes of claiming Termination Payments exceeded the Total Project Cost.

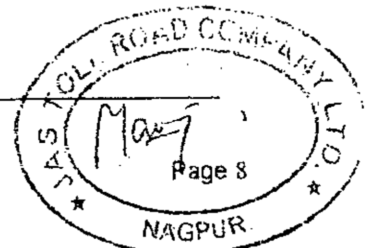
"Equity Support" shall have the meaning ascribed thereto in Clause 23.2.

"Escrow Account" means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement.

"Escrow Agreement" shall have the meaning ascribed thereto in Clause 25.2.

"Exempted Vehicles" means vehicles that shall be exempted from payment of Fees and include Defence Vehicles, Vehicles with very important person symbols (VIP), Police Vehicles, ambulances, fire tenders, Funeral Vans, Post and Telegraph department vehicles, Central and State Government vehicles on duty. The vehicles with the following dignitaries, shall be deemed to be vehicles having VIP symbols namely, President of India, the Vice-President of India, Governors of States, Central and State Ministers, Leaders of Opposition of Lok Sabha or Rajya Sabha or State Legislators, Lt. Governors of Union Territories, Speakers and Chairman of State Legislature, Executive Councilors, Foreign Diplomats stationed in India using cars with CD symbols.





"Fee" means the charge levied on and payable for a vehicle using the Project Highway in accordance with the Fee Notification and this Agreement.

"Fee Notification" means the Notification to be issued by GOI in exercise of the powers conferred by Sub-rule (1) and (2) of Rule 3 of the National Highways (Collection of Fees by Any Person for the Use of Section of National Highways/Permanent Bridge/Temporary Bridge on National Highways) Rules, 1997 in respect of the levy and collection of the Fees and a copy of which is at Schedule "G" and includes any such subsequent notifications issued from time to time to give effect to the provisions of this Agreement.

"Financial Close" means the date on which the Financing Documents providing for funding by the Senior Lenders have become effective and the Concessionaire has immediate access to such funding under the Financing Documents.

"Financing Documents" means the documents executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Project and includes amendments or modifications made in accordance with Clause 9.1(iv).

"Financing Package" means the financing package of the Project furnished by the Concessionaire along with its Bid indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved by the Senior Lenders for the purposes of funding of the Project.

"Force Majeure" or "Force Majeure Event" shall mean an act, event, condition or occurrence specified in Article XXIX.

"GOI" means the Government of India.

"GOK" means the Government of the State of Karnataka.

"Good Industry Practice" means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the NHAI Act, and would mean good engineering practices in the design,



engineering, construction and project management and which would be expected to result in the performance of its obligations by the Concessionaire and in the operation and maintenance of the Project Highway in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.

"Governmental Agency" means GOI, GOK or any ministry, department, commission, board, authority, instrumentality or agency, under the control of GOI or GOK having jurisdiction over all or any part of the Project Highway or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

"Grant" shall have the meaning ascribed thereto in Clause 23.1.

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article XXXV.

"Independent Engineer" shall have the meaning ascribed thereto in Clause 20.1.

"Indirect Political Event" shall have the meaning ascribed thereto in Clause 29.3.

"Lenders' Representative" means the person(s) duly authorised by the Senior Lenders to deal with the Parties to the Agreement with regard to the issues arising out of and contained in this Agreement.

"Maintenance Manual" shall have the meaning ascribed to it in Clause 18.2

"Maintenance Programme" shall have the meaning ascribed to it in Clause 18.3.

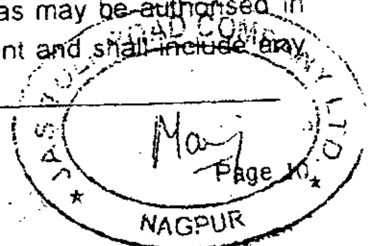
"Material Adverse Effect" means material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement.

"Material Breach" means a breach by either Party of any of its obligations in this Agreement which shall be deemed to have a Material Adverse Effect on the Project and which it shall have failed to cure within the Cure Period.

"MORT&H" shall mean Ministry of Road Transport and Highways, Government of India

"NHAI Representative" means such person or persons as may be authorised in writing by NHAI to act on its behalf under this Agreement and shall include any





person or persons having authority to exercise any rights or perform and fulfill any obligations of NHAI under this Agreement.

"Net Cash Flow" means in any Accounting Year revenue income less tax payments, O&M Expense, Concession Fee and Debt Service Payments to Senior Lenders.

"Non Political Event" shall have the meaning ascribed thereto in Clause 29.2.

"O&M" means the operation and maintenance of the Project Highway during the Operations Period and includes but is not limited to functions of maintenance, collection and appropriation of Fees and performance of other services incidental thereto.

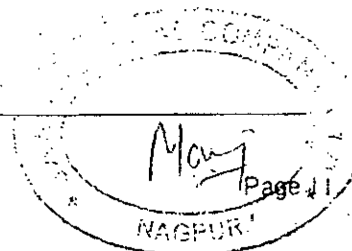
"O&M Contract" means the Operation and Maintenance Contract that may be entered into between the Concessionaire and the O&M Contractor for O&M of the Project Highway.

"O&M Contractor" means the person or entity with whom the Concessionaire has entered into an O&M Contract for discharging O&M functions for and on behalf of the Concessionaire.

"O&M Expense" means expenses incurred by or on behalf of the Concessionaire duly certified by its Statutory Auditors or by NHAI, as the case may be, for all regularly scheduled and reasonably anticipated O&M during Operations Period, including, without limitation (a) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any (b) cost of materials, supplies, utilities and other services (c) premia for insurance (d) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project Highway at its full design capacity, (e) all repair, replacement and maintenance costs of the Project Highway, and (f) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Project Highway according to the Specifications and Standards at its full design capacity.

"O&M Support" shall have the meaning ascribed thereto in Clause 23.5.

"O&M Works" means all works necessary to keep the Project Highway in operation during the Operations Period.





"Operations Period" means the period commencing from COD and ending on the Termination Date.

"PCU" shall have the m eaning ascribed to the passenger car unit in the 'Indian Roads Congress', Publication No.IRC-64, 1990, a true copy of which is at Schedule 'W', and for the purposes of this Agreement refers only to such PCUs which pay Fees in accordance with the Fee Notification.

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

"Performance Security" shall mean the irrevocable Bank Guarantee in a sum of Rs. 30 million issued by State Bank of India in favour of NHAI, in the form set forth in Schedule 'F', guaranteeing the due performance and discharge of all the obligations of the Concessionaire under this Agreement.

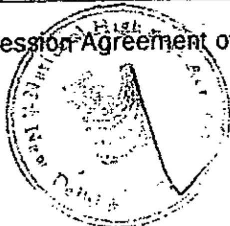
"Political Event" shall have the meaning ascribed thereto in Clause 29.4.

"Preliminary Notice" shall have the meaning attributed thereto in Clause 32.1.2.

"Project" means the development, design, financing, procurement, engineering and construction, operation and maintenance of the Project Highway in accordance with the provisions of this Agreement and shall include all works relating to or in respect of the Project Highway as described in Article II.

"Project Agreements" means this Agreement, the Financing Documents, the EPC Contract, if any, the O&M Contract, if any, the Tolling Contract, if any, and any other agreements or contracts entered into by the Concessionaire with NHAI or others relating to the Project during the subsistence of this Agreement.

"Project Assets" means all physical and other assets relating to and forming part of the Project Highway including but not limited to (i) rights over the Site in the form of license, right of way or otherwise, (ii) tangible assets such as civil works including the foundation, embankments, pavements, road surface, interchanges, bridges, approaches to bridges and flyovers, road overbridges, drainage works, lighting facilities, traffic signals, sign boards, milestones, toll plazas, equipment for the collection of tolls or relating to regulation of traffic, electrical works for lighting on the Project Highway, telephone and other communication systems and equipment for the Project, rest areas, administration and maintenance depots, relief centers, service facilities etc. (iii) Project Facilities situated on the Site (iv) the rights of the Concessionaire under the Project Agreements, (v) financial assets, such as security deposits for electricity supply, telephone etc.



(vi) insurance proceeds and (vii) Applicable Permits and authorisations relating to or in respect of the Project Highway, but does not include Additional Facilities.

"Project Completion" shall have the meaning ascribed thereto in Clause 15.1.

"Project Completion Schedule" means the progressive Project milestone set forth in Schedule 'H' for the realization of the Project Highway complete in all respects by the Scheduled Project Completion Date.

"Project Facilities" means all the amenities and facilities situated on the Site, as described in Schedule 'C'.

"Project Highway" means the rehabilitation and widening of the existing two lanes of NH-4 from km 29.5 to km 62 and addition of 2 (two) more lanes thereto so as to have four lanes and shall include the Project Assets and the Project Facilities to be designed, engineered and built on Site and to be operated and maintained during the Concession Period in accordance with the provisions of this Agreement.

"Provisional Certificate" shall have the meaning ascribed to it in Clause 16.5.

"Punch List" shall have the meaning ascribed to it in Clause 16.5.

"Realisable Fee" means all the Fees due and realisable under this Agreement but does not include Fees that the Concessionaire has not been able to realise after due diligence and best efforts.

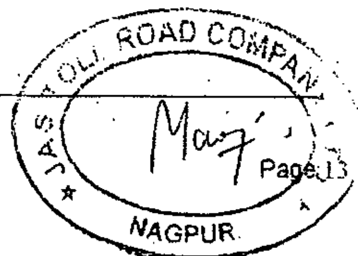
"Revenue Shortfall Loan" shall have the meaning ascribed to it in Clause 24.1.

"Rs." Or "Rupees" means the lawful currency of the Republic of India.

"SBI PLR" means the prime lending rate per annum for loans with 1(one) year maturity as fixed from time to time by the State Bank of India, and in the absence of such rate, the average of the prime lending rates for loans with 1(one) year maturity fixed by the Bank of India and the Bank of Baroda and failing that any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties.

"Scheduled Project Completion Date" shall have the meaning set forth in Clause 15.3.





"Senior Lenders" means the financial institutions, banks, funds and agents or trustees of debenture h-iders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents for meeting costs of all or any part of the Project and who hold pari passu charge on the Concession granted by this Agreement.

"Site" means the real estate licensed by NHAI to the Concessionaire under and in accordance with this Agreement on which the Project Highway is situated and more particularly described in Schedule 'A'.

"Specifications and Standards" means the specifications and standards relating to the quality, capacity and other requirements for the Project Highway as set forth in Schedule 'D' and any modifications thereof, or additions as included in the design and engineering for the Project Highway submitted by the Concessionaire to and expressly approved by NHAI.

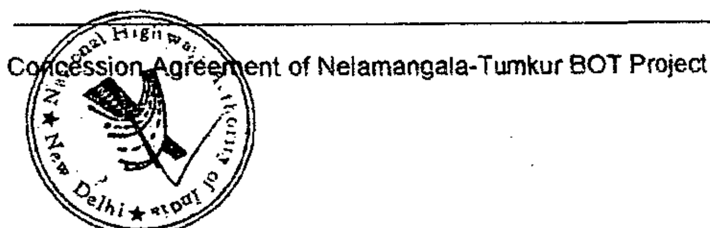
"State Support Agreement" means the agreement to be entered into between the GOK, NHAI and the Concessionaire substantially in the form set forth in Schedule 'R' for provision of support, backup and services required from GOK for the performance of Concessionaire's obligations under this Agreement.

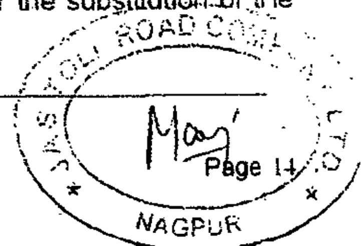
"Statutory Auditors" means recognized and reputable firm of Chartered Accountants duly licensed to practice in India acting as statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment or replacement thereof, for the time being in force.

"Subordinated Debt" means any borrowings by the Concessionaire subordinated to the financial assistance provided by the Senior Lenders for meeting the Total Project Cost but does not include any interest thereon.

"Subsistence Revenue Level" means the total amount of Fee revenue that is required by the Concessionaire in an Accounting Year to meet the sum of (a) the O&M Expense subject to an annual ceiling of 2% (two percent) of the Total Project Cost in the first operations year, to be revised each year to reflect the variations in the WPI in each subsequent years and (b) Debt Service Payments due to the Senior Lenders in an Accounting Year.

"Substitution Agreement" means the agreement referred to in Article XXXV and to be entered into among the Concessionaire, NHAI and the Senior Lenders in the form set forth in Schedule 'U' providing, inter alia, for the substitution of the





Concessionaire by any other person subject to and in accordance with the provisions of this Agreement and the Substitution Agreement.

"Taxes" means any Indian taxes on corporate income, sales tax, excise duties, customs duties and local taxes and any impost of like nature (whether Central, State or local) charged, levied or imposed on the goods, materials, equipment and services incorporated in and forming part of the Project Highway, on the construction, operation and maintenance thereof and on the Project Assets, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever.

"Termination" means the expiry or termination of this Agreement and the Concession hereunder.

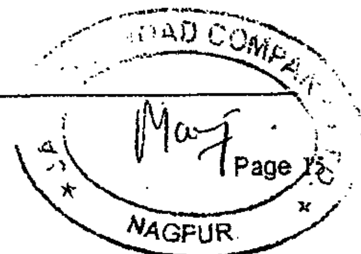
"Termination Date" means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice.

"Termination Notice" means the communication issued in accordance with this Agreement by any one Party to the other Party terminating this Agreement.

"Termination Payment" means the amounts payable by NHAI to the Concessionaire under this Agreement upon the Termination of this Agreement and shall consist of payments relating to Debt Due, Subordinated Debt and Equity, as the case may be, and such other amounts as are expressly provided for under this Agreement. Provided, however, that for purposes of determining Termination Payments to be made by NHAI under this Agreement, the capital cost of the Project Highway shall at all times be reckoned as an amount not exceeding the Total Project Cost and the liability of NHAI to make such Termination Payments relating to Debt Due, Subordinated Debt and Equity shall be determined as if such capital cost was restricted to Total Project Cost.

"Tests" mean the tests to be carried out as set forth in and in accordance with Schedule 'J' to determine the Project Completion and its certification by the Independent Engineer for commencement of commercial operation of the Project Highway.

"Toll Plaza" means the structures and barriers erected on the Project Highway (one at Nelamangala end and the other at the Tumkur end) for the purpose of regulating the entry/exit of vehicles in accordance with the provisions of this Agreement.





"Tolling Contract" means the contract, if any, entered into by the Concessionaire with the Tolling Contractor for operation of the Toll Plazas including collection of Fees for and on behalf of the Concessionaire.

"Tolling Contractor" means the person, if any, with whom the Concessionaire has entered into a Tolling Contract for operation of Toll Plazas and collection of Fees for and on behalf of the Concessionaire.

"Total Project Cost" means the lowest of the following:

a. a sum of Rs. 1550 million;
b. actual capital cost of the Project upon completion of the Project Highway as certified by the Statutory Auditors; or
c. total project cost as set forth in Financing Documents.

Provided further that if part of the Total Project Cost is funded in foreign currency, in accordance with the Financing Package, then the rate of exchange shall be determined as on the date of Bid, and the Total Project Cost shall be computed as if such foreign currency were converted with reference to such exchange rate. In the event of Termination of this Agreement requiring NHAI to make Termination Payments, the liability of NHAI shall be determined on basis of the rate of exchange prevailing on the date of Termination Notice and the amounts payable by NHAI for Debt Due and Subordinated Debt, as the case may be, shall be computed accordingly.

"Vesting Certificate" shall have the meaning attributed to it in Clause 33.4.

"WPI" means the wholesale price index published by the Ministry of Industry, GOI and shall include any index, which substitutes the WPI.

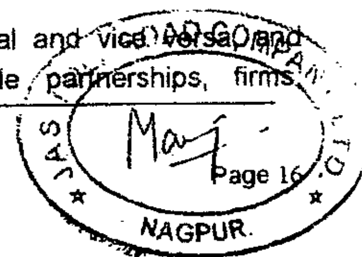
1.2 In this Agreement, unless the context otherwise requires,

(a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;

(b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India;

(c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms,





companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);

(d) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;

(e) terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;

(f) the words "include" and "including" are to be construed without limitation;

(g) references to "construction" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;

(h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

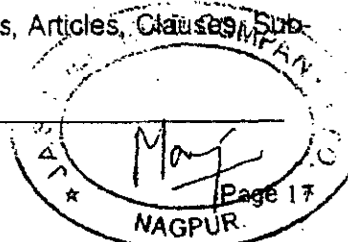
(i) any reference to day shall mean a reference to a calendar day;

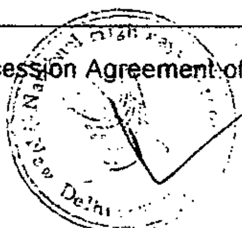
(j) any reference to month shall mean a reference to a calendar month;

(k) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(l) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of NHAI hereunder or pursuant hereto in any manner whatsoever;

(m) references to Recitals, Articles, Clauses, Sub-clauses, Paragraphs, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-





clauses, paragraphs, and Schedules of or to this Agreement;

(n) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

(o) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;

(p) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the "Damages"); and

(q) unless otherwise expressly provided in this Agreement any Documentation required to be provided or furnished by the Concessionaire to NHAI and/or the Independent Engineer shall be provided free of cost and in three copies and if NHAI and/or the Independent Engineer are required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

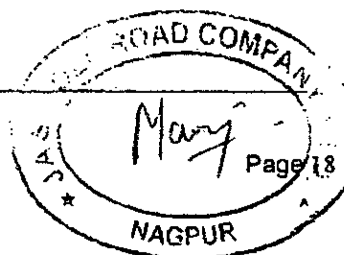
1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

1.4 Priority of contract documents and errors/discrepancies

1.4.1 The several documents forming this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall in the event of any conflict between them be in the order they are set out:

(i) this Agreement





(ii) all other documents forming part of this Agreement

i.e. document at (i) above shall prevail over the documents at (ii) above.

1.4.2 In case of ambiguities or discrepancies within this Agreement the following shall apply:

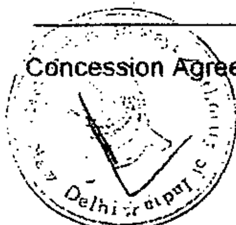
(i) between two Clauses of this Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other Clauses;

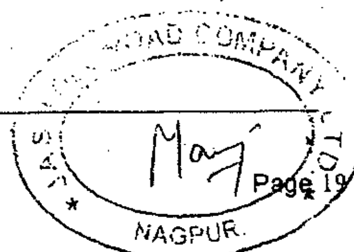
(ii) Between the Clauses and the Schedules, the Clauses shall prevail save as otherwise expressly set forth in Clause 1.4.1;

(iii) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(iv) Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;

(v) Between any value written in numerals and that in words, the latter shall prevail.





II SCOPE OF PROJECT

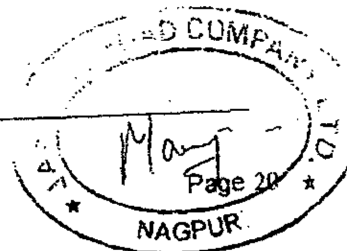
2.1 The Project shall be executed on the Site, which is described in Schedule 'A' of this Agreement. The scope of the Project shall include performance and execution by the Concessionaire of all design, engineering, financing, procurement, construction, completion, operation and maintenance of the Project Highway as described in Schedule 'B' and Schedule 'C' of this Agreement. It shall include rehabilitation and widening of the existing two lanes of NH-4 from Km. 29.5 to Km. 62, four-laning thereof in accordance with the Specifications and Standards set forth in Schedule 'D' and operation and maintenance thereof in accordance with Schedule 'L'. It shall also include the performance and fulfillment of other obligations by the Concessionaire under this Agreement.

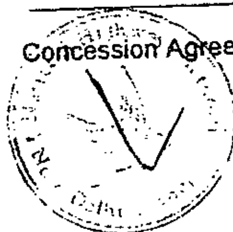
The Concessionaire shall undertake its obligations at its own cost and risk.

2.2 Test Section

NHAI represents that the stretch of new two lane comprised in the Project Highway and located between km. 30 and km. 34 (the "Test Section") is being constructed by the Public Works Department of the State of Karnataka and the same is expected to be completed by December 2001 and handed over to the Concessionaire. The Test Section will be under observation by MORT&H and Central Road Research Institute (CRRI) for a period of 4.5 years from the date of completion thereof (Observation Period). The Concessionaire is required to maintain the Test Section during the Observation Period in accordance with the maintenance requirements to be specified by MORT&H/CRRI. After expiry of the Observation Period, the Concessionaire shall strengthen and continue to maintain the same in accordance with the Specifications and Standards appended in Schedule D.

The Concessionaire shall during the Observation Period allow access to the authorised officers and representatives of MORT&H/CRRI for the purpose of observation.





(g) all of the representations and warranties of the Concessionaire set forth in Article XI are true and correct as on date of this Agreement and as on the Appointed Date;

(h) NHAI shall have received from the Concessionaire copies (certified as true copies by an authorised officer of the Concessionaire) of the constitutional documents of the Concessionaire;

(i) NHAI shall have received copies (certified as true copies by a Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorising the execution, delivery and performance by the Concessionaire of this Agreement and each of the Project Agreements;

(j) NHAI shall have received from the Indian legal counsel of the Concessionaire a legal opinion with respect to the authority of the Concessionaire to enter into this Agreement and the Project Agreements and the Financing Documents and the enforceability of the provisions thereof; and

(k) MORT&H shall have issued a Fee Notification substantially in the form at Schedule 'G'.

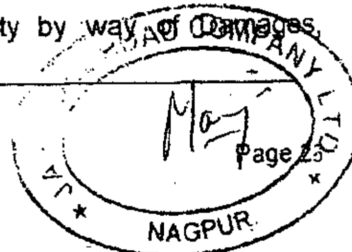
4.2 Any of the conditions precedent set forth in Clause 4.1, save and except condition of Sub-clause (b) and (c) thereof, may be waived fully or partially by NHAI at anytime in its sole discretion.

4.3 Obligation to Satisfy the Conditions Precedent.

The Concessionaire shall make all reasonable endeavors to procure the satisfaction in full of the Conditions Precedent set out in Clause 4.1 above and NHAI shall make all reasonable endeavors to procure fulfillment of the conditions set forth in Sub-clauses (b), (c), (d) and (k) of Clause 4.1. Each Party shall bear its respective cost and expense of satisfying such Condition Precedent.

4.4 If the Conditions Precedent set forth in Clause 4.1 have not been satisfied on or before the Financial Close and the NHAI has not waived, fully or partially, such conditions under Clause 4.1, NHAI may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement in accordance with provisions of Clause 32.2 without being liable in any manner whatsoever to the Concessionaire and forfeit the Performance Security by way of Damages,





provided that where NHAI does not fulfill its obligations under Clause 4.3 and terminates this Agreement under this Clause 4.4, it shall refund in full the Performance Security, as the case may be.

V. PERFORMANCE SECURITY

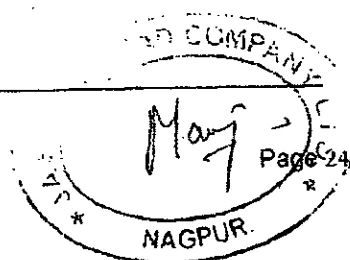
5.1 The Concessionaire has provided to NHAI the Performance Security that is valid for a period of three years from the date of this Agreement.

5.2 The Performance Security shall be released by NHAI to the Concessionaire upon contribution of the Equity (excluding Equity Support, if any) by the shareholders of the Concessionaire to the extent of 100% and upon the Concessionaire having expended on the Project and paid out an aggregate sum of not less than 20% (twenty percent) of the Total Project Cost as certified by the Statutory Auditors of the Concessionaire and provided the Concessionaire is not in breach of this Agreement. If the Concessionaire is in breach of this Agreement, the Performance Security shall be continued till the COD or until the breach is cured; whichever is earlier.

5.3 In the event of the Concessionaire being in default in the due and faithful performance of its obligations under this Agreement and failing to remedy such default within the Cure Period, the NHAI shall without prejudice to its other rights and remedies hereunder be entitled to encash and appropriate the Performance Security as Damages for such default. Upon such encashment and appropriation of the Performance Security, NHAI shall grant a period of 30 (Thirty) days to the Concessionaire to provide fresh Performance Security and the Concessionaire shall within the time so granted furnish to NHAI such Performance Security failing which NHAI shall be entitled to Terminate this Agreement under clause 32.2. The provision set forth in Clause 5.2 and this Clause 5.3 shall apply mutatis-mutandis to such fresh Performance Security.

5.3 Notwithstanding anything to the contrary contained in clause 5.3, upon furnishing of fresh Performance Security in accordance with clause 5.3, the Concessionaire shall be granted an additional period of 60 (Sixty) days as Cure Period for remedying the defaults and complying with his obligations under this Agreement. In the event of the Concessionaire continuing to be in breach of the provisions of this Agreement after such Cure Period, NHAI shall be entitled to terminate this Agreement under the provisions of Clause 32.2.





VI FEES

6.1 The Concessionaire shall be entitled during the Operations Period to levy and collect the Fees from the users of the Project Highway pursuant to and in accordance with the Fee Notification set forth in Schedule 'G' and this Agreement. Provided, however, that such Fee shall be rounded off upwards to the nearest one rupe for ensuring ease of payment and collection.

6.2 The Concessionaire acknowledges that the Fee Notification, inter alia, provides for annual revision in the Fees linked to the extent of variation in WPI as per the Fee Notification, and hereby confirms that save and except as provided in the Fee Notification, the Concessionaire is not entitled to and shall not seek any relief whatsoever from NHAI, GOI or GOK on account of increase or otherwise in WPI or on any other account except in accordance with the express provisions of this Agreement.

6.3 The Concessionaire shall not collect any Fees in excess of 50% of the applicable Fees for the specific category of the vehicle from such users of the Project Highway who use the Project Highway without crossing more than one Toll Plaza.

6.4 The Concessionaire shall not collect any Fees in relation to Exempted Vehicles.

6.5 The Fees collected by the Concessionaire or NHAI or NHAI's nominee pursuant hereto shall be deposited in the Escrow Account and appropriated in accordance with the provisions of Article XXV.

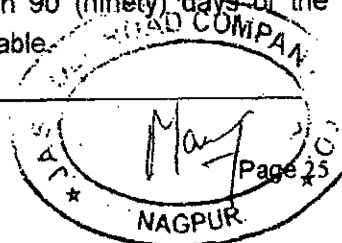
6.6 The Concessionaire may delegate its right to collect Fees to the O&M Contractor or the Tolling Contractor or to any other person provided, however, that notwithstanding such delegation, the Concessionaire shall be and remain solely liable and responsible for the collection of Fees in accordance with this Agreement and its deposit into the Escrow Account.

VII CONCESSION FEE

7.1 In consideration of the grant of Concession under this Agreement, the Concession Fee payable by the Concessionaire to the NHAI shall be Re.1.00 (Rupee One) per year during the term of this Agreement.

7.2 The Concession Fee shall be paid in advance within 90 (ninety) days of the commencement of the year for which it is due and payable.





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VIII ADDITIONAL TOLLWAY

8.1 Notwithstanding anything to the contrary contained in this Agreement, any of NHAI, GOI or GOK may construct and operate either itself or have the same, inter alia, built and operated on BOT basis or otherwise any Expressway or other toll road, not being a bye-pass, between, inter alia, Nelamangala and Tumkur (the "Additional Tollway") provided that such Additional Tollway shall not be opened to traffic before expiry of 8 (eight) years from the Appointed Date.

8.2 In the event of NHAI, GOI or GOK, as the case may be, constructing or permitting construction of any Additional Tollway as set forth in this Clause 8.2, and the Additional Tollway is commissioned at any time after 8 (eight) years from the Appointed Date, then the Concession Period shall be increased by half the number of years by which such commissioning precedes the expiry of the Concession Period. For example, if the commissioning of the Additional Tollway occurs after 10 (ten) years from the Appointed Date, the Concession Period shall be increased to 23.5 (Twenty three and a half) years.

8.3 Upon commissioning of the Additional Tollway, the Concessionaire shall continue to levy and collect the Fee under this Agreement and shall not offer any discounts or reductions in such Fee except with the prior written consent of NHAI. Provided, however, that any such discounts or reductions that the Concessionaire had offered to any general or special class of users or vehicles for a continuous period of three years prior to the commissioning of the Additional Tollway may continue in the same form and manner after the commissioning of such Additional Tollway.

8.4 NHAI shall ensure that the per kilometer fee to be levied and collected from any vehicle or class of vehicles using the Additional Tollway shall at no time be less than an amount which is 133% of the per kilometer Fee levied and collected from similar vehicles or class of vehicles using the Project Highway.





CHAPTER –III
OBLIGATIONS AND UNDERTAKINGS

IX. OBLIGATIONS OF THE CONCESSIONAIRE

9.1 The Concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere setout in this Agreement, the following:

(i) make, or cause to be made, necessary applications to the relevant Govemmental Agencies with such particulars and details, as may be necessary for obtaining all Applicable Permits, and obtain such Applicable Permits in conformity with the Applicable Laws;

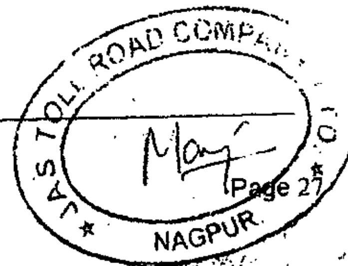
(ii) notify to NHAı forthwith the occurrence of Financial Close;

(iii) submit to NHAI certified true copies of each of the Project Agreements within 7 (seven) days of their execution;

(iv) not make any replacement, amendment or modifications to any of the Project Agreements without the prior written consent of NHAI, where such replacement, amendment or modification has or may have the effect of increasing or imposing any financial liability or obligation on NHAI in any manner, and where such amendment or modification is made without such consent, not to enforce such amendment or modification nor permit enforcement thereof against NHAI in any manner whatsoever;

(v) give NHAI not less than 30 (thirty) days written notice prior to entering into, amending or replacing any Project Agreement so as to enable NHAI to provide its consent or offer its comments, if any thereon which, if made, shall be duly considered and given effect to by the Concessionaire before entering into, amending or replacing such Project Agreement;

(vi) remove promptly from the Project Highway all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and shall keep the Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits;





(vii) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Highway;

(viii) provide all assistance to the Independent Engineer as it may require for the performance of its duties and services;

(ix) provide to NHAI reports on regular basis during the Construction Period and the Operations Period in the form and manner set forth in this Agreement and Schedule 'X';

(x) obtain and maintain in force on and from the Appointed Date all insurance in accordance with the provisions of this Agreement and Good Industry Practice;

(xi) acquire such real estate, as the Concessionaire may deem appropriate for the Additional Facilities and to indemnify and save harmless and defend GOI, NHAI, and GOK from and against all proceedings, claims, demands, costs, expenses, losses and damages arising out of or relating to the securing of rights to use such real estate by the Concessionaire or any person claiming through or under the Concessionaire;

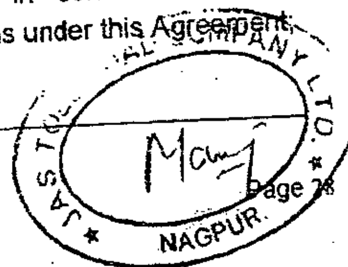
(xii) undertake Debt Service Payments in accordance with the Financing Documents;

(xiii) levy and collect Fees from users of the Project Highway at the rates set forth in the Fee Notification and in accordance with this Agreement and regulate the traffic on the Project Highway in accordance with the Applicable Laws;

(xiv) ensure and procure that each Project Agreement contains provisions that entitle NHAI to step into such agreement in its discretion in place and substitution of the Concessionaire in the event of Termination of this Agreement on account of default or breach by the Concessionaire;

(xv) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;

(xvi) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;





(xvii) comply with all Applicable Permits and Applicable Laws in the performance of the Concessionaire's obligations under this Agreement including those being performed by any of the Contractors;

(xviii) develop, implement and administer a surveillance and safety program for the Project Highway, the users thereof, and the Contractors personnel engaged in the provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Schedule 'S', Applicable Laws and Good Industry Practice;

(xix) take all reasonable precautions for the prevention of accidents on or about the Project Highway and provide all reasonable assistance and emergency medical aid to accident victims;

(xx) not to place or create and nor permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance or security interest over all or any part of Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly set forth in this Agreement;

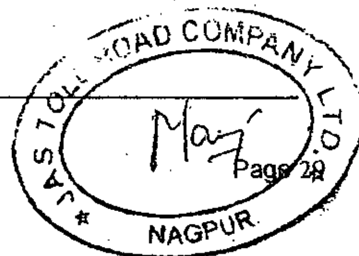
(xxi) make its own arrangements for quarrying, and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits at Concessionaire's own cost and expense;

(xxii) be responsible for safety, soundness and durability of the Project Highway including other structures forming part thereof and their compliance with the Specifications and Standards;

(xxiii) not claim or demand possession or control of any roads, structures or real estate which do not form part of the Project Highway;

(xxiv) after receiving vacant possession of the Site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachments, if any

(xxv) make payment to Police department or any Government Agency, if required, for provision of such services as are not provided in the normal course or are available on payment;

(xxvi) indemnify the NHAI against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Concessionaire in connection with the performance of its obligations under this Agreement; and

(xxvii) comply with the Divestment Requirements and hand over the Project Highway to NHAI upon Termination of the Agreement.

9.2 Subject to the terms and conditions of this Agreement the Concessionaire shall at its cost and expense:

(i) undertake the design, engineering, procurement and construction and financing of the Project Highway in accordance with this Agreement;

(ii) operate and maintain the Project Highway at all times in conformity with this Agreement including but not limited to the Specifications and Standards set forth in Schedule 'D', Schedule 'L', the Maintenance Programme and Good Industry Practice.

9.3 The Concessionaire shall, before commencement of construction of the Project Highway:

(i) submit to NHAI with due regard to Project Completion Schedule as set forth in Schedule 'H' and Scheduled Project Completion Date, its design, engineering and construction time schedule and shall formulate and provide CPM/PERT charts for the completion of the said activities;

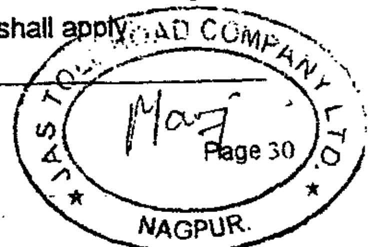
(ii) finalise the design and detailed engineering basis;

(iii) have requisite organisation and designate and appoint a Project manager and such other managers, officers and representatives as it may deem appropriate to supervise the Project and to deal with the NHAI Representative and be responsible for all necessary exchanges of information re ,uired pursuant to this Agreement; and

(iv) undertake, do and perform such acts, deeds and things as may be necessary or required for construction and Project completion under and in accordance with this Agreement.

9.4 In respect of the Concessionaire's obligations with respect to the Drawings of the Project Highway as set forth in Schedule 'I', the following shall apply:





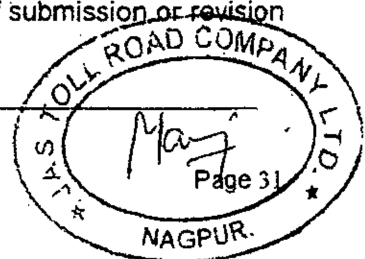
(i) The Concessionaire shall prepare and submit with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to NHAI and the Independent Engineer for review and comments.

(ii) By forwarding the Drawings for review and comment to NHAI, the Concessionaire represents that it has determined and verified that the design and engineering including field construction criteria related thereto is in conformity with the Specifications, Standards and quality set forth in this Agreement for and in respect of the Project Highway.

(iii) Within 30 (thirty) days of the receipt of the Drawings, NHAI shall review the same and convey its comments/observations to the Concessionaire with particular reference to the conformity or otherwise with the Specifications and Standards set forth in this Agreement. It is expressly agreed that notwithstanding any review and comment/observations of NHAI on any Drawings or failure of NHAI to provide comments/ observations thereon, NHAI shall not be liable for the same in any manner whatsoever and the Concessionaire shall remain solely responsible for and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement. The Concessionaire shall not be obliged to await the comments/observations of NHAI on the Drawings submitted pursuant hereto beyond the period set forth hereinabove.

(iv) If the comments/observations of NHAI indicate that the Drawings are not in conformity with the Specifications and Standards set forth in this Agreement, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to NHAI for review, observations and comments. NHAI shall give its observations and comments, if any, within 15 (fifteen) days of the receipt of such revised Drawings provided, however, that any observations or comments of NHAI or failure of NHAI to give any observations or comments on such revised drawings shall not relieve or absolve the Concessionaire of its obligation to conform to such Specifications and Standards.

(v) The Concessionaire shall be responsible for delays in Project Completion Schedule caused by reasons of any Drawings not being in conformity with the Specifications and Standards, and the Concession Period shall not be extended in any manner whatsoever on account of submission or revision of any Drawings.

(vi) Within 90 (ninety) days of the COD, the Concessionaire shall furnish NHAI with "as built" Drawings reflecting the Project Highway as actually designed, engineered and constructed, including without limitation an "as built" survey illustrating the layout of the Project Highway and setback lines, if any, of the buildings and structures forming part of Project Facilities.

9.5 The Concessionaire shall submit to NHAI the drafts of the Project Agreements including in particular the EPC Contract, the Financing Documents, the O&M Contract and the Tolling Contract for its review. NHAI shall have the right but not the obligation to provide its comments and observations, if any, in respect of the Project Agreements within 30 (thirty) days of the receipt thereof by NHAI and the Concessionaire shall consider all such comments/observations. Any such comments/observations by NHAI on any Project Agreements or the failure to provide such comments shall not relieve or absolve in any manner whatsoever the Concessionaire of its obligations, duties and liabilities under this Agreement nor shall it make NHAI and/or Independent Engineer liable to the Concessionaire in any manner whatsoever and shall be without prejudice to the rights of NHAI hereunder.

9.6 During the Construction Period, the Concessionaire shall be responsible for maintaining the Site including the existing two lanes of the Project Highway at its own cost and expense. During this period, the Concessionaire shall modify, repair or otherwise make improvements to the existing two lanes before expiry of six months from the Appointed Date so that the existing two lanes comply with requirements provided in Schedule 'L' and at least 2 (two) lanes of the Project Highway are ordinarily open to traffic at all times. The Concessionaire shall promptly undertake all such repairs and maintenance works as may be necessary to keep the Project Highway traffic-worthy and safe during the Construction Period.

9.7 The Concessionaire shall, at all times, afford access to the Site to the authorised representatives of NHAI, Senior Lenders, and the Independent Engineer and to the persons duly authorised by any Governmental Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Highway and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project Highway consistent with the purpose for which such persons have gained such access to the Site.

X. OBLIGATIONS OF NHAI

10.1 NHAI agrees to observe, comply and perform the following:

(i) enable access to the Site, free from Encumbrances, in accordance with this Agreement;

(ii) permit peaceful use of the Site by the Concessionaire as licensee under and in accordance with the provisions of this Agreement without any let or hindrance from NHAI or persons claiming through or under it;

(iii) assist and provide all reasonable support to the Concessionaire in obtaining Applicable Permits;

(iv) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;

(v) procure that no barriers are erected or placed by GOK or any Governmental Agency on the Project Highway except on account of any law and order situation or upon national security considerations;

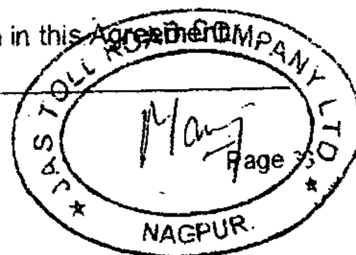
(vi) enter into the State Support Agreement with the Concessionaire and the GOK;

(vii) assist the Concessionaire in obtaining necessary assistance to regulate traffic on the Project Highway subject to and in accordance with the Applicable Laws;

(viii) assist the Concessionaire in obtaining Police assistance from GOK against payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Highway;

(ix) operate and maintain the Project Highway during the Development Period, at its own cost and expense, in a manner that the level of service is at no time inferior to the level prevailing on the date when bids were received for this Concession; and

(x) Observe and comply with its obligations set forth in this Agreement.



XI. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to NHAI that:

(i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;

(ii) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(iii) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;

(iv) It has the financial standing and capacity to undertake the Project;

(v) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(vi) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;

(vii) All the information furnished in the Bid is, and shall be, true and correct as on the Appointed Date and COD and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of its Accounting Years after the Appointed Date furnished to NHAI shall give true and fair view of the affairs of the Concessionaire;

(viii) It shall furnish a copy of the audited accounts of the Company within 120 (one hundred twenty) days of the close of its each Accounting Year after the Appointed Date and any material change subsequent to the date of such accounts shall be notified to NHAI by the Concessionaire within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;

(ix) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Memorandum

and Articles of Association of the Concessionaire or any Member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which, it is a Party or by which it or any of its properties or assets is bound or affected;

(x) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;

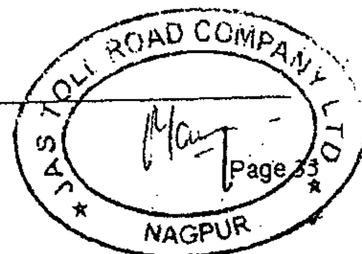
(xi) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;

(xii) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;

(xiii) The Concessionaire shall ensure that:

(a) aggregate equity share holding of the Consortium Members and their Associates in the issued and paid up equity share capital of the Concessionaire shall not be less than (a) 51% (fifty one percent) during the Construction Period and for 3 (three) years following COD, and (b) 26% (twenty six per cent) during the balance remaining Operations Period;

(b) M/s Jayaswals Neco Limited ["Lead Technical Member"] and M/s SREI International Finance Limited ["Lead Financial Member"] holds at any time not less than 25% each, of the Consortium's holding in the paid up equity capital of the Concessionaire.



(c) M/s Jayaswals Ashoka Infrastructure Private Limited, the other Member of the Consortium holds at any time not less than10% each of the Consortium's holding in the paid up equity capital of the Concessionaire.

(xiv) Each Consortium Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested NHAI to enter into this Agreement with the Concessionaire pursuant to the LOA and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(xv) All rights and interests of the Concessionaire in and to the Project Highway shall pass to and vest in NHAI on the Termination Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Concessionaire or NHAI and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement;

(xvi) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to NHAI, or to any Governmental Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

(xvii) It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of NHAI, GOI or GOK in connection therewith.

11.2 Representations and Warranties of NHAI.

NHAI represents and warrants to the Concessionaire that:

(i) NHAI is duly organised and validly existing under the laws of India;

(ii) NHAI has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(iii) NHAI has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

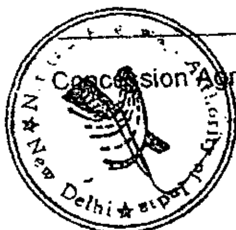
(iv) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

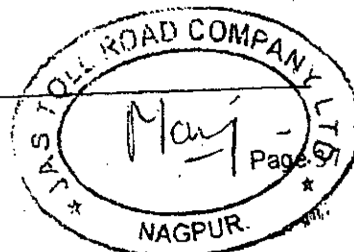
(v) NHAI is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

XII. DISCLAIMER

12.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the traffic volumes, Specifications and Standards, Site and all the information provided by NHAI and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

12.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 12.1 above and hereby confirms that NHAI shall not be liable for the same in any manner whatsoever to the Concessionaire, the Consortium Members or their Associates.





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CHAPTER – IV
PROJECT DEVELOPMENT AND OPERATIONS

XIII. USE AND DEVELOPME .T OF THE SITE

13.1 NHAI hereby grants to the Concessionaire for the Development Period access to the Site for carrying out such surveys, investigations and soil tests as the Concessionaire may deem necessary at the Concessionaire's cost, expense and risk without causing disruption in the traffic on the existing lanes of the Project Highway.

13.2 NHAI hereby grants to the Concessionaire for the Concession Period the right and licence to enter upon all real estate comprised in the Site as briefly described in Schedule 'A' and to survey design, engineer, procure, construct, operate and maintain the Project Highway including the Project Facilities in accordance with the provisions of this Agreement. Such right and licence of the Concessionaire to the use the Site shall be subject to:

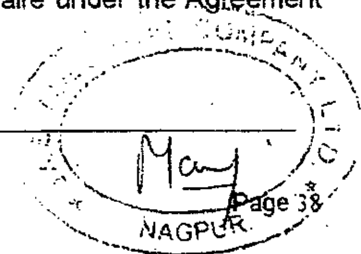
13.2.1 Any existing utilities on, under or above the Site are kept in continuous satisfactory use, if necessary by the use of suitable temporary or permanent diversions with the authority of the controlling body of that utility;

13.2.2 Any existing roads or right of ways are kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent diversions with the authority of the controlling body of that road or right of way. For any diversion or construction, of temporary roads, NHAI will assist the Concessionaire in acquiring the right of way;

13.2.3 The rights of the road users to use the road in accordance with this Agreement;

13.2.4 A right of access by the NHAI itself and any of its agents to perform their obligations and rights under the Concession Agreement or any other functions that they have, and to conduct any study or trial for the purpose of research;

13.3 The license and the right to use the Site shall be granted for the purpose of carrying out the function placed upon the Concessionaire under the Agreement and not for any other purposes;





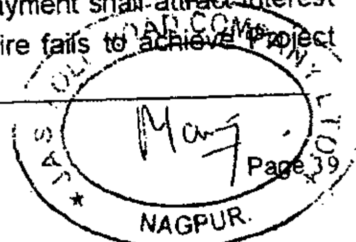
13.4 The Concessionaire shall bear all costs and charges for special and temporary rights of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project Highway and the performance of its obligations under this Agreement.

13.5 The Site shall be made available to the Concessionaire pursuant hereto by NHAI free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to NHAI on account of any costs, expenses and charges for the use of such Site for the duration of the Concession Period save and except as otherwise expressly provided in this Agreement. NHAI shall procure for the Concessionaire access to the Site, free of Encumbrances, not later than 150 (one hundred and fifty) days from the date of this Agreement. Provided, however, that if NHAI does not enable such access to any part or parts of the Site for any reason other than a Force Majeure Event or breach of this Agreement by the Concessionaire, NHAI shall pay to the Concessionaire Damages at the rate of Rs.1000 (Rupees one thousand) per month per 1000 (one thousand) sq. meters or part thereof if such area is required by the Concessionaire for Construction Works. Such Damages shall be raised to Rs.2000 (Rupees two thousand) per month after COD if such area is essential for the smooth and efficient operation of the Project Highway. Provided further that the Completion Certificate or the Provisional Certificate, as the case may be, for the Project Highway shall not be affected or delayed as a consequence of such parts of the Site remaining under construction even after the Scheduled Project Completion Date.

13.6 On or after the Appointed Date, the Concessionaire shall commence, undertake and complete all Construction Works on the Project Highway in accordance with this Agreement.

13.7 Construction of the Project Highway shall be undertaken by the Concessionaire in conformity with the Project Completion Schedule 'H' and the Project milestones set forth in Schedule 'H' for completion of the Project Highway on or before the Scheduled Project Completion Date. If the Concessionaire fails to achieve any such Project milestone other than Project Completion, within a period of 90 (ninety) days from the date set forth in Schedule "H' then it shall pay Damages to NHAI at the rate of Rs.500,000 (Rs. Five lakhs) per day until such milestone is achieved. NHAI may either recover such Damages from the Performance Security or demand payment thereof from the Concessionaire. The Concessionaire shall make such payment within 7 (seven) days of receiving such demand from NHAI and any delay in making such payment shall attract interest @ SBI PLR plus two per cent. If the Concessionaire fails to achieve Project





completion as per the Scheduled Project Completion Date as set forth in Schedule 'H', then it sha pay damages to NHAI as per Article XV. However, in the event that the Concessionaire achieves the Provisional Certification or the Completion Certificate by Scheduled Project Completion Date, the damages recovered under this clause, if any, would be refunded (without interest) to the Concessionaire.

XIV. MONITORING AND SUPERVISION OF CONSTRUCTION

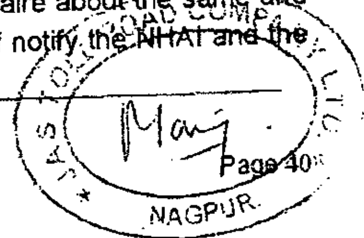
14.1 During the Construction Period, the Concessionaire shall furnish to NHAI and the Independent Engineer monthly progress reports of actual progress of the Construction Works comprised in the Project Highway and shall give all such other relevant information as may be required by NHAI and/or the Independent Engineer.

14.2 The Independent Engineer shall inspect the Construction Works and the Project Highway at least once a month during the Construction Period and make out an Inspection Report of such inspection (the "Inspection Report"). It shall send a copy of its Inspection Report to NHAI and the Concessionaire. The Concessionaire shall take necessary action to remedy the lapses, if any, stated in the Inspection Report for ensuring compliance with the provisions of this Agreement. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

14.3 For the purposes of determining that Construction Works are being undertaken in accordance with Specifications and Standards and Good Industry Practice, the Independent Engineer shall require the Concessionaire to carry out such Tests at such time and frequency and in such manner as may be necessary in accordance with Good Industry Practice for quality assurance. The Concessionaire shall with due diligence carry out, or cause to be carried out, all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. The Concessionaire shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such test results and furnish a report to the Independent Engineer in this behalf.

14.4 If the Independent Engineer or NHAI shall reasonably determine that the rate of progress of the Construction of the Project Highway is such that the Project Completion is not feasible on or before the Scheduled Project Completion Date by the Concessionaire, it shall so notify the Concessionaire about the same and the Concessionaire shall within 15 (fifteen) days thereof notify the NHAI and the





Independent Engineer about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

14.5 (a) Upon recommendation of the Independent Engineer or suo-moto, NHAI may by written notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in the reasonable opinion of the NHAI such work is being carried on in a manner which threatens the safety of the works or of the users of the Project Highway.

(b) The Concessionaire, shall upon instructions of the NHAI pursuant to sub-clause (a) above suspend the Construction Works or any part thereof for such time and in such manner as may be specified by NHAI and subject to sub-clause (c) below, the costs incurred during such suspension to properly protect and secure the Construction Works or such part thereof as is necessary in the opinion of the Independent Engineer ("Preservation Costs"), shall be borne by the Concessionaire.

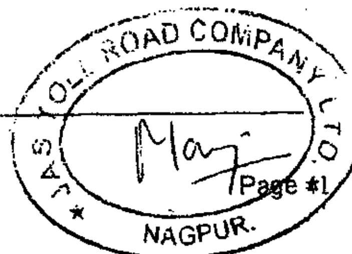
(c) If the suspension pursuant to Sub-clause (a) above, is caused by:

(i) any reason other than default or breach of this Agreement by the Concessionaire including breach of any of the obligations of the Concessionaire under this Agreement, the Preservation Costs shall be borne by NHAI;

(ii) reason of default or breach of this Agreement by NHAI the Preservation Costs shall be borne by NHAI; or

(iii) reason of any Force Majeure Event, the Preservation Costs shall be borne by the Concessionaire save and except to the extent otherwise expressly provided in Article XXIX.

(d) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension to the Project Completion Schedule, the Scheduled Project Completion Date and the Concession Period, to which the Concessionaire is reasonably entitled and shall notify NHAI accordingly. NHAI shall extend the Project Completion Schedule, the Scheduled Project Completion Date and the Concession Period in accordance with the recommendations of the Independent Engineer.



XV. COMPLETION

15.1 The Project shall be deemed to be complete and open to traffic only when the Completion Certificate or the Provisional Certificate is issued in accordance with the provisions of Article XVI (the "Project Completion").

15.2 COD of the Project shall be the date on which the Independent Engineer has issued the Completion Certificate or the Provisional Certificate, as the case may be, under this Agreement and the Concessionaire shall not levy and collect any Fee until it has received such Completion Certificate or the Provisional Certificate.

15.3 The Concessionaire guarantees that the Project Completion shall be achieved in accordance with the provisions of this Agreement on a date not later than 24 (twenty four) months from the Appointed Date ("Scheduled Project Completion Date").

15.4 If the Project Completion is not achieved by the Scheduled Project Completion Date for any reason other than conditions constituting Force Majeure or for reasons attributable to NHAI or any Governmental Agency, the Concessionaire shall pay to NHAI as weekly Damages for delay in the achievement of the COD, an amount calculated at the rate of 0.01% (point zero one per cent) of the Total Project Cost per week or part thereof.

15.5 If the COD does not occur within 12 (twelve) months from the Scheduled Project Completion Date, NHAI shall be entitled to Terminate this Agreement in accordance with the provisions of Clause 32.2.

XVI. TESTS

16.1 All Tests shall be conducted in accordance with Schedule 'J' and the Applicable Laws and Applicable Permits. NHAI shall designate a NHAI Representative to witness and observe the Tests. All Tests shall be held in accordance with the schedule notified by the Concessionaire to the Independent Engineer and the NHAI Representative who may either witness the Tests themselves or designate their representatives for this purpose, if they choose.

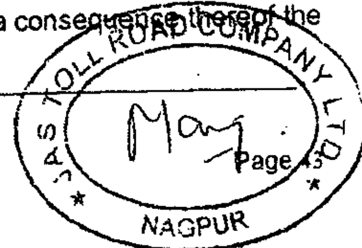
16.2 The Independent Engineer shall monitor the results of the Tests to determine the compliance of the Project Highway with the Specifications and Standards. The Concessionaire shall provide to the Independent Engineer and the NHAI with copies of all Test data including detailed Test results.

16.3 At least 30 (thirty) days prior to the likely completion of the Project Highway, the Concessionaire shall notify the Independent Engineer and NHAI of the same and shall give notice of its intent to conduct any final Tests. The Concessionaire shall give to NHAI and the Independent Engineer at least 10 (ten) days' prior notice of the actual date on which it intends to commence the Tests and at least 7 (seven) days' prior notice of the commencement date of any subsequent Tests. The Independent Engineer shall have the right to suspend or delay any Test if it is reasonably anticipated or determined during the course of the Test that the performance of the Project Highway or any part thereof does not meet the Specifications and Standards.

16.4 Upon the Independent Engineer determining the Tests to be successful and all parts of the Project Highway to have been completed and the Project Highway can be legally, safely and reliably placed in commercial operations, the Independent Engineer shall forthwith issue to the Concessionaire and NHAI a Certificate substantially in the form set forth in Schedule 'K' (the "Completion Certificate").

16.5 Independent Engineer may at the request of the Concessionaire issue a provisional certificate of completion ("Provisional Certificate") if the Tests are successful and all parts of Project Highway can be legally, safely and reliably placed in commercial operation though certain works or things forming part thereof are not yet complete. In such an event such Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire ("Punch List"). All Punch List items shall be completed by the Concessionaire within 120 (one hundred twenty) days of the date of issue of such Provisional Certificate. Subject to payment of Damages equal to Rs.200,000 (Rs. Two hundred thousand) per week or part thereof on account of any delay beyond the aforesaid period of 120 (one hundred twenty) days, the Concessionaire shall be entitled to a further period of upto 180 (one hundred eighty) days for completion of Punch List items. Upon completion of all Punch List items to the satisfaction of the Independent Engineer, the Independent Engineer shall issue the Completion Certificate to the Concessionaire. Failure to complete the Punch List items in the manner set forth in this Clause 16.5 shall entitle NHAI to Terminate this Agreement in accordance with the provisions of Clause 32.2.

16.6 If the Independent Engineer certifies to NHAI and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the

Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.

16.7 Upon receipt of a report from the Independent Engineer or after conducting its own review or inspection, if NHAI is not satisfied with the results of any Tests, it shall within 7 (seven) days thereof notify the Concessionaire of its reasons to conclude that the Completion Certificate should not be issued, in which case the Concessionaire shall promptly take such action as will achieve such satisfaction. Such procedure shall be repeated as necessary after rectification and remedy of reasons/ causes by the Concessionaire on account of which the Tests were unsuccessful, until the Completion Certificate or Provisional Certificate has been issued in accordance with this Agreement by the Independent Engineer.

16.8 The Concessionaire shall bear all the expenses relating to Tests under this Agreement. Provided, however, that if the NHAI Representative requires any Test to be conducted which is not specified in this Agreement and such Test is not necessary in the opinion of the Independent Engineer, then the expenses on such Test shall be reimbursed by NHAI to the Concessionaire.

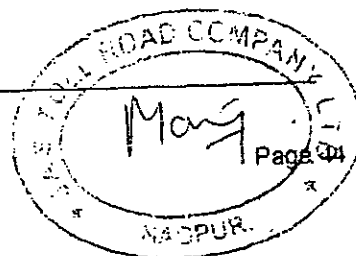
XVII. CHANGE OF SCOPE

17.1 NHAI may, notwithstanding anything to the contrary contained in this Agreement, require provision of such additional works and services on or about the Project Highway which are beyond the scope of the Project as contemplated by this Agreement ("Change of Scope"), provided such changes do not require expenditure exceeding 5% (five per cent) of the Total Project Cost and do not adversely affect the COD. All such changes shall be made by NHAI by an order (the "Change of Scope Order") issued in accordance with the procedure set forth in this Article XVII.

17.2 Procedure for Change of Scope

(a) NHAI shall whenever it desires provision of additional works and services referred to in Clause 17.1, issue to the Concessionaire a notice of change of scope (the "Change of Scope Notice").

(b) upon receipt of such Change of Scope Notice, the Concessionaire shall provide to NHAI and the Independent Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following:

(i) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the work is required to be carried out before COD, and

(ii) the cost to the Concessionaire of complying with such Change of Scope Notice (including, without limitation, material and labour cost information furnished in accordance with the current schedule of rates applicable to the works assigned by NHAI to its contractors, including the premium on such rates).

(iii) the options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof including a detailed breakdown by work classifications. Provided, however, that the costs of providing such information shall be reimbursed to the Concessionaire by NHAI to the extent such costs are certified to be reasonable by the Independent Engineer.

(c) If NHAI desires, after receipt of information set forth in sub-clause (b) to proceed with the Change of Scope, it shall convey the desired option to the Concessionaire by issuing a Change of Scope Order and thereupon the Parties shall make good faith efforts to mutually agree upon the costs and time for implementing of the same. Upon reaching an agreement relating to such costs and time, NHAI shall issue a written confirmation of the Change of Scope Order and thereupon the Concessionaire shall proceed with performance of such order. In the event, the Parties are unable to agree, NHAI may, by issuing a confirmation in writing of such Change of Scope Order, require the Concessionaire to proceed with the performance of the Change in Scope Order pending resolution of such dispute.

17.3 A change of Scope Order will be effective and binding upon issuance of a confirmation of such Change of Scope Order by NHAI. Notwithstanding a dispute regarding cost and time for implementation of such Change of Scope Order, the Concessionaire shall proceed with the performance of such Change of Scope Order promptly following NHAI's confirmation pursuant to Clause 17.2(c). Pending resolution of such dispute, NHAI shall pay to the Concessionaire an amount equal to the costs that are certified by the Independent Engineer to be reasonable plus one-half the difference between the amount certified by the Independent Engineer and the amount claimed by the Concessionaire with final adjustments to be made in accordance with the resolution of dispute under the Dispute Resolution Procedure. All claims by the Concessionaire pursuant to this Article XVII shall be supported by such documentation as is reasonably sufficient for NHAI to determine the accuracy thereof, including invoices



from Contractors and subcontractors and certification of such claims by the Statutory Auditors.

17.4 All claims by the Concessionaire pursuant to Article XVII shall be supported by such documentation as is reasonably sufficient for NHAI to determine the accuracy thereof, including invoices from Contractors and subcontractors and certification of such claims by Statutory Auditors.

XVIII. OPERATION AND MAINTENANCE

18.1 The Concessionaire shall operate and maintain the Project Highway by itself, or through O&M Contractors and if required, modify, repair or otherwise make improvements to the Project Highway to comply with Specifications and Standards, and other requirements set forth in this Agreement, Good Industry Practice, Applicable laws and Applicable Permits and manufacturer's guidelines and instructions with respect to toll systems, and more specifically:

(i) permitting safe, smooth and uninterrupted flow of traffic during normal operating conditions;

(ii) charging, collecting and retaining the Fees in accordance with this Agreement;

(iii) minimizing disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Highway by providing a rapid and effective response and maintaining liaison procedures with emergency services;

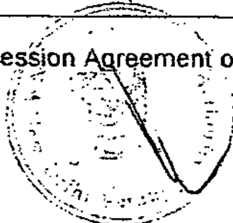
(iv) undertaking routine maintenance including prompt repairs of potholes, cracks, concrete joints, drains, line marking, lighting and signage;

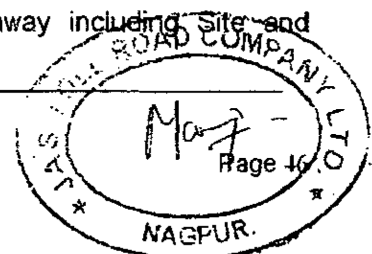
(v) undertaking major maintenance such as resurfacing of pavements, repairs to structures, repairs and refurbishment of tolling system and hardware and other equipment;

(vi) carrying out periodic preventive maintenance to Project Highway including tolling system;

(vii) preventing with the assistance of concerned law enforcement agencies unauthorised entry to and exit from the Project Highway;

(viii) preventing with the assistance of the concerned law enforcement agencies encroachments on the Project Highway including Site and preserve the right of way of the Project Highway;





(ix) maintaining a public relations unit to interface with and attend to suggestions from users of the Project Highway, the media, Government Agencies, and other external agencies; and

(x) adherence to the safety standards set out in Schedule 'S'.

18.2 The Concessionaire shall in consultation with the Independent Engineer prepare not later than 180 (one hundred and eighty) days before the Scheduled Project Completion Date, the repair and maintenance manual (the "Maintenance Manual") for the regular and periodic maintenance, and shall ensure and procure that at all times during the Operations Period, the Project Highway is maintained in a manner that it complies with the Specifications and Standards and the minimum maintenance requirements set forth in Schedule L. The Concessionaire shall supply, at least two months before the COD, 10 (ten) copies of the Maintenance Manual to NHAI and 3 (three) copies each to the GOI, GOK and Independent Engineer. Copies of the Maintenance Manual shall also be made available by the Concessionaire for public inspection during office hours at a conspicuous place adjacent to each Toll Plaza on the Project Highway.

18.3 Not later than forty five (45) days before the beginning of each Accounting Year, the Concessionaire, shall in consultation with the Independent Engineer prepare and provide to NHAI, its proposed programme of preventive and other scheduled maintenance of the Project Highway subject to the minimum maintenance requirements set forth in Maintenance Manual and in Schedule 'L' necessary to maintain the Project Highway at all times in conformity with the Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following:

(i) intervals and procedures for the carrying out of inspection of all elements of the Project Highway;
(ii) criteria to be adopted for deciding maintenance needs;
(iii) preventive maintenance schedule;
(iv) intervals at which the Concessionaire shall carry out periodic maintenance;
(v) intervals for major maintenance and the scope thereof; and
(vi) lane closures schedule for each type of maintenance (length and time).

18.4 Maintenance shall include replacement of equipment/consumables, horticultural maintenance and upkeep of all Project Assets in good order and working condition. Maintenance shall not include the extension of any existing pavements, bridges, structures and other civil works unless part of the Project.

18.5 The Concessionaire shall keep the carriageways, rest areas and other Project Facilities and Toll Plazas in a clean, tidy and orderly condition free of litter and debris.

18.6 During the Operations Period, the Concessionaire shall not carry out any material modifications to the Project Highway save and except where such (i) modification is required by Good Industry Practice; or (ii) modification is necessary for the Project Highway to operate in conformity with the Specifications and Standards prescribed under this Agreement. Provided that the Concessionaire shall notify NHAI of the proposed modifications along with details thereof at least fifteen days before commencing work on such modifications and shall reasonably consider such suggestions as NHAI may make within 15 (fifteen) days of receipt of such details by NHAI.

18.7 The Concessionaire shall be responsible for the maintenance of the approach roads to and underpasses and overpasses upto 100 mtrs from the Project Highway in accordance with Good Industry Practice.

18.8 Safety, Vehicle Breakdown and Accident

18.8.1 In the case of unsafe conditions, vehicle breakdowns and accidents, the Concessionaire shall follow the relevant operating procedures, which shall include the setting up of temporary traffic cones and lights as well as the removal of obstruction and debris expeditiously. Such procedures shall be in accordance with Applicable Laws, Applicable Permits and provisions of this Agreement.

18.8.2 The Concessionaire shall ensure that any diversion or interruption of traffic is remedied without delay. The Concessionaire's responsibility for rescue operations on the Project Highway shall be limited to the removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth traffic flow on the Project Highway.

18.8.3 The Concessionaire shall ensure that safety standards specified in Schedule 'S' are strictly complied with in the event of any lane closure or diversion of traffic. Compliance with Schedule 'S' will be monitored by the Independent Engineer and a breach by the Concessionaire of its obligations in respect of this Schedule identified by the Independent Engineer shall be notified immediately and is required to be cured within 24 hours of its notification notwithstanding inspection, reporting procedures outlined elsewhere in this Agreement. In addition, each

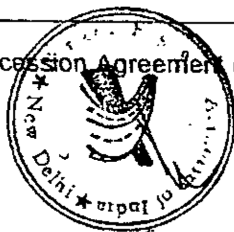
notified breach shall lead to the award of a penalty point to the Concessionaire. ^ total of five penalty points in any continuous period of 365 days shall constitute a Material Breach of this Agreement.

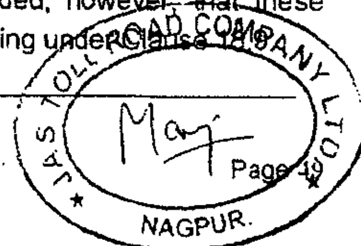
18.9 Emergency De-commissioning

18.9.1 If, in the reasonable opinion of the Concessionaire there exists an emergency which warrants decommissioning and closure to traffic of whole or any part of the Project Highway, the Concessionaire shall be entitled to de-commission and close the whole or the relevant part of the Project Highway to traffic for so long as such emergency and the consequences thereof warrant, provided however that such emergency decommissioning will be notified to NHAI promptly. NHAI may issue directions to the Concessionaire for dealing with such situations and the Concessionaire shall abide by such directions.

18.9.2 The Concessionaire shall re-commission the Project Highway or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist.

18.10 The Concessionaire shall not close any lane of the Project Highway for undertaking maintenance or repair works except with the prior written approval of the NHAI which may delegate its authority to the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made at least 7 (seven) days before the proposed closure of lane and shall be accompanied by particulars indicating the nature and extent of repair works, the length and section required to be closed and the period of closure. The Concessionaire shall also furnish particulars indicating the minimum time required for completing such repair works. Within 5 (five) days of receiving such request, NHAI or the Independent Engineer, as the case may be, shall grant permission with such modifications as it may deem necessary. Upon receiving such permission, the Concessionaire shall be entitled to close the lane in accordance with such permission and re-open it within the period stipulated in such permission. For any delay in re-opening such lane during the first Operations Year, the Concessionaire shall pay Damages to NHAI calculated at the rate of Rs.10,000 (Rs. Ten thousand), per day or part thereof for every stretch of 100 (one hundred) meters or part thereof in each lane until such time the stretch has been re-opened for traffic. These damages of Rs.10,000 (Rupees ten thousand) shall be applicable in the first Operations year and shall be revised by WPI in each subsequent Operations year. Provided, however, that these provisions shall not apply to Emergency decommissioning under Clause 18.9.





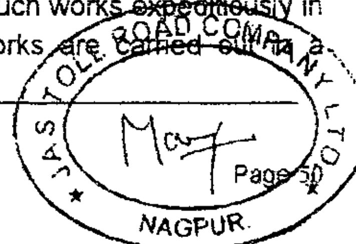
18.11 Save and except as otherwise be expressly provided in this Agreement, if the Project Highway including Construction Works or any part thereof shall suffer any loss or damage during the Concession Period, from any cause whatsoever, the Concessionaire shall, at its cost and expense rectify and remedy such loss or damage forthwith in a manner so as to make the Project Highway conform in every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement.

18.12 In the event the Concessionaire does not maintain and/ or repair the Project Highway or a part thereof upto and in accordance with the Specifications and Standards and/or in accordance with the Maintenance Programme or the Maintenance Manual, and shall have failed to commence remedial works within 30 (thirty) days of receipt of notice in this behalf from NHAI or the Independent Engineer, or the O&M Inspection Report, as the case may be, NHAI shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to undertake the repair and maintenance of the Project Highway at the risk and cost of the Concessionaire and to recover the same from the Concessionaire. In addition to recovery of the aforesaid cost of repair and maintenance by NHAI, a sum equal to 25% (twenty five per cent) of such cost shall also be recovered by NHAI from the Concessionaire as Damages. NHAI shall have the right and the Concessionaire hereby expressly grants to NHAI the right to recover the same directly from the Escrow Account and for that purpose the Concessionaire hereby expressly authorises NHAI and hereby gives irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of NHAI under this Clause.

18.13 In the event NHAI does not exercise its option to undertake the required repair and maintenance after expiry of the 30 (thirty) days period stipulated in Clause 18.12 it shall recover Damages from the Concessionaire for default in operating and maintaining the Project Highway in conformity with this Agreement. Such Damages shall be payable after the aforesaid period of 30 (thirty) days and until the default is cured. The amount of Damages shall be calculated for each day of default at the higher of the following, namely (a) Rs.10,000 (Rs. Ten thousand), and (b) 0.1% (zero point one per cent) of the cost of such repair as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of NHAI under this Agreement, including Termination thereof.

18.14 If the Concessionaire commences any works for curing any defects or deficiencies in the Project Highway, it shall complete such works expeditiously in accordance with Good Industry Practice. If such works are carried out in a





manner that results in a delay of more than 30 (thirty) days as compared to the time required in accordance with Good Industry Practice, NHAI shall recover Damages from the Concessionaire as if a default had occurred under Clause 18.13.

18.15 The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project Highway is not available to traffic after the COD on account of any of the following for the duration thereof:

(i) an event of Force Majeure;

(ii) measures taken to ensure the safe use of the Project Highway except when unsafe conditions on the road occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

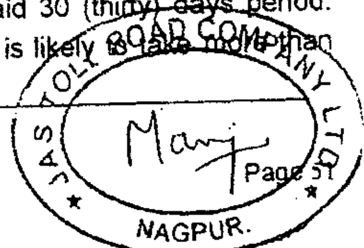
(iii) compliance with a request from NHAI or the directions of any Governmental Agency the effect of which is to close all or any part of the Project Highway.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project Highway open to traffic and use provided they can be safely operated and kept open to traffic.

XIX MONITORING AND SUPERVISION DURING OPERATION

19.1 The Concessionaire shall undertake periodic (at least once every calendar month but once every week during monsoons) inspection of the Project Highway to determine the condition of the Project Highway including its compliance or otherwise with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and the maintenance required and shall submit reports of such inspection ("Maintenance Reports") to NHAI and the Independent Engineer.

19.2 The Independent Engineer shall review the Maintenance Reports and inspect the Project Highway at least once a month during the Operations Period and make out an Inspection Report of such inspection (the "O&M Inspection Report"). The Independent Engineer shall send a copy of its O&M Inspection Report to NHAI and the Concessionaire. The Concessionaire shall within 30 (thirty) days of the receipt of the O&M Inspection Report remedy the defects and deficiencies, if any, set forth in such O&M Inspection Report and submit its report in respect thereof to the Independent Engineer and NHAI within the said 30 (thirty) days period. Where the remedying of such defects or deficiencies is likely to take more than





30 (thirty) days in accordance with Good Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight. The O&M Inspection Report may also require the Concessionaire to undertake such tests as may be specified by the Independent Engineer for the purpose of determining that the Project Highway is at all times in conformity with the Specifications and Standards. The Concessionaire shall undertake such Tests without any delay and furnish a copy of the results thereof to the Independent Engineer and NHAI along with a written statement specifying in reasonable detail the measures, if any, that it proposes to undertake for curing the defaults or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Report by the Independent Engineer or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

19.3 NHAI may inspect the Project Highway at any time for a review of the compliance by the Concessionaire with its maintenance obligations under this Agreement.

19.4 The Concessionaire shall furnish to NHAI within 7 (seven) days of completion of each calendar month during the Operations Period, a statement of Fees in the form set forth in Schedule 'M' (the "Monthly Fee Statement").

XX. INDEPENDENT ENGINEER

20.1 NHAI shall appoint a consulting engineering firm or body corporate out of the 3 (three) names proposed by the Concessionaire from the panel of 5 (five) consultants selected by NHAI in accordance with the selection process set forth in Schedule 'N' to be the Independent Engineer to undertake and perform the duties, work, services and activities set forth in Schedule 'O'.

20.2 The appointment of the Independent Engineer pursuant to Clause 20.1 shall initially be for a period of four years from the date of its appointment. The date of such appointment shall be no later than 45 (forty-five) days from the date of this Agreement. After the expiry of the aforesaid appointment, NHAI shall appoint for a term of 3 (three) years as Independent Engineer such person as it may deem appropriate from the list drawn in accordance with Schedule 'N' as amended from time to time by mutual consent of NHAI and the Concessionaire and who may or may not be the same person, who was Independent Engineer during the initial term. NHAI may in its discretion thereafter renew such appointment or appoint another person out of the list determined pursuant to Schedule 'N', as NHAI may deem appropriate to be the Independent Engineer for a term of three years at a time.

20.3 The Independent Engineer shall report to NHAI about their work, services, and activities pursuant hereto through regular periodic reports (at least once every month) as the situation may warrant. Such report of Independent Engineer shall include but not be limited to the matters and things set forth in said Schedule 'O'.

20.4 The remuneration, cost and expenses of the Independent Engineer shall be paid by NHAI. One-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to NHAI within 30 (thirty) days of receiving a statement of expenditure from NHAI.

20.5 NHAI may, with the prior concurrence of the Concessionaire, terminate the appointment of the Independent Engineer at any time subject to appointment of their replacement by another Independent Engineer in accordance with this Article XX.

20.6 NHAI may appoint another Independent Engineer in accordance with this Article XXII, if the existing Independent Engineer, in accordance with the terms of its appointment, resigns or notifies its intention not to continue as the Independent Engineer;

20.7 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, efficient and diligent manner, it may make a written representation to NHAI, stating its reasons in detail, seeking termination of the appointment of the Independent Engineer. Upon receipt of such representation, NHAI shall hold a tripartite meeting with the Concessionaire and Independent Engineer for amicable resolution of the dispute. If the dispute remains unresolved, it shall be resolved in accordance with the Dispute Resolution Procedure. In case the appointment of Independent Engineer is terminated under this Clause, it shall be replaced by another Independent Engineer in accordance with this Article XX.

20.8 If either party disputes any advice, instruction or award of the Independent Engineer, the dispute shall be resolved in accordance with the Dispute Resolution Procedure.

XXI. TRAFFIC SAMPLING

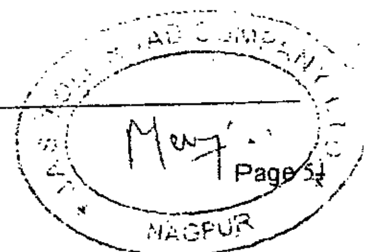
21.1 For the purpose of determination and/or verification of the actual traffic on the Project Highway, NHAI shall, in addition to inspection of Concessionaire's records, be entitled to undertake traffic sampling at such frequency and in such manner as NHAI may deem appropriate including in the manner as set forth in

Schedule 'P' hereto. The Concessionaire shall provide all facilities and assistance as NHAI may reasonably require for undertaking such traffic sampling.

21.2 If the data collected from traffic sampling undertaken pursuant to Clause 21.1 demonstrates that actual traffic is more than the traffic according to the records of the Concessionaire, the actual traffic for the purposes of this Agreement shall be deemed to be the traffic as determined by such NHAI traffic sampling pursuant to this Article XXI.

21.3 The Concessionaire may, in consultation with NHAI, commission an independent agency to conduct traffic sampling under this Article. The report of such agency shall be furnished to NHAI for such use as it may deem fit.

21.4 In the event of any dispute arising as to the actual traffic on the Project Highway the same shall be resolved in accordance with the Dispute Resolution Procedure under this Agreement.



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CHAPTER - V
FINANCING ARRANGEMENTS

XXII. FINANCIAL CLOSE

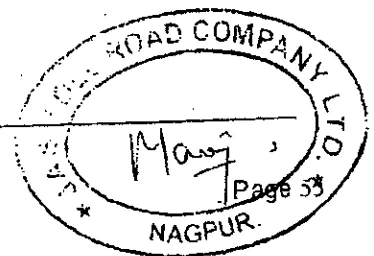
22.1 The Concessionaire shall provide to NHAI, a copy of the Financing Package furnished by it to the prospective Senior Lenders. As and when such Financing Package is approved by the Senior Lenders, with or without modifications, a copy of the same shall be furnished by the Concessionaire to NHAI forthwith.

22.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire covenants with NHAI that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement. If the Concessionaire shall fail to achieve Financial Close within the said 180 (one hundred and eighty) days period, the Concessionaire shall be entitled to a further period of 90 (ninety) days subject to an advance weekly payment by the Concessionaire to NHAI of a sum of Rs.50,000 (Rupees fifty thousand) per week or part thereof for any delay beyond the said 180 (one hundred eighty) day period, as Damages on account of such delay in achieving Financial Close within the said 180 (one hundred eighty) day period by the Concessionaire.

22.3 Notwithstanding anything to the contrary contained in this Agreement, NHAI shall be entitled to terminate this Agreement forthwith, without being liable in any manner whatsoever to the Concessionaire, by a communication in writing to the Concessionaire pursuant to Clause 32.2 if the Concessionaire shall have failed to pay in advance the Damages to NHAI under and in accordance with Clause 22.2 above.

22.4 Notwithstanding anything to the contrary contained in this Agreement, if the Financial Close shall not occur within 270 (two hundred and seventy) days as set forth in Clause 22.2 above, all rights, privileges, claims and entitlements, if any, of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

22.5 Upon Termination of this Agreement under Clauses 22.2 and 22.3, NHAI shall be entitled to encash the Performance Security, as the case may be, and appropriate the proceeds thereof as Damages.



XXIII. GRANTS

23.1 NHAI agrees to provide to the Concessionaire cash support by way of an outright Grant (the "Grant") equal to the sum, set forth in the Bid of the Bidder and accepted by NHAI namely, Rs.248.28 million (Rupees Two Hundred Forty Eight decimal twenty eight million) in accordance with the provisions of this Article XXIII.

23.2 As set forth in the Bid of the Bidder and accepted by NHAI, Rs. 207.8 million (Rupees Two Hundred and Seven decimal Eight million) of the amount of the Grant shall be applied by the Concessionaire for meeting the capital cost of the Project and shall be treated as part of the shareholders' funds (the "Equity Support"). The balance of the Grant available after deducting therefrom the amount of Equity Support, which is Rs. 40.48 million (Rupees Forty decimal four eight million) shall be provided to the Concessionaire in accordance with this Article XXIII for meeting O&M Expenses of the Project (the "O&M Support").

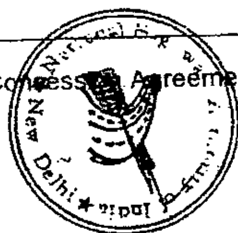
23.3 The whole or any part of the Grant shall be disbursed by NHAI to the Concessionaire if and only if:

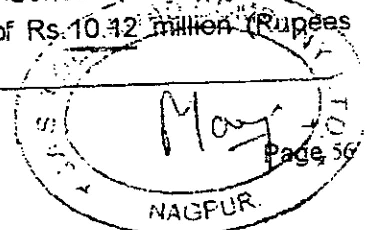
23.3.1 the Concessionaire is not in Material Breach of this Agreement at the time of such disbursement; and

23.3.2 the Concessionaire has contributed and spent on the Project at least 80% (eighty percent) of the total Equity (excluding Equity Support) and other amount, which is in the nature of quasi equity, required to be provided as part of the Total Project Cost.

23.4 The disbursement of the Equity Support pursuant to this Article XXIII shall be made by NHAI to the Concessionaire proportionately along with the balance loan funds to be disbursed by the Senior Lenders under the Financing Documents for meeting the Total Project Cost. NHAI shall disburse each tranche of the Equity Support as aforesaid by credit to the Escrow Account within 15 (fifteen) days of the release of each loan installment by the Senior Lenders to the Concessionaire provided the Concessionaire has submitted to NHAI along with each disbursement request a certificate from its Statutory Auditors certifying the above particulars and has given at least 7 (seven) days to NHAI for processing such request.

23.5 The O&M Support shall be disbursed by NHAI to the Concessionaire by credit to the Escrow Account in four quarterly installments of Rs.10.12 million (Rupees





Ten decimal one two million) each and the first such installment shall be released within 30 (thirty) days of the COD.

23.6 If NHAI shall fail to disburse any tranche of the Equity Support or the O&M Support within the periods set forth for the payment thereof to the Concessionaire, NHAI shall pay interest on such delayed tranche @ SBI PLR plus two per cent.

XXIV. REVENUE SHORTFALL LOAN

24.1 If the Realisable Fees in any Accounting Year during the Concession Period shall fall below the Subsistence Revenue Level as a result of an Indirect Political Event, or a Political Event as set forth in Article XXIX, NHAI agrees to provide to the Concessionaire such shortfall support, by way of a loan ("Revenue Shortfall Loan") with interest thereon @ SBI PLR per annum. Provided, however, that any reserves of the Concessionaire and any sums received or likely to be received by the Concessionaire through insurance claims (except insurance payments for physical loss used to carry out requisite repairs) or payments by NHAI under Article XXIX shall first be deducted and only the balance remaining shall be disbursed as the Revenue Shortfall Loan.

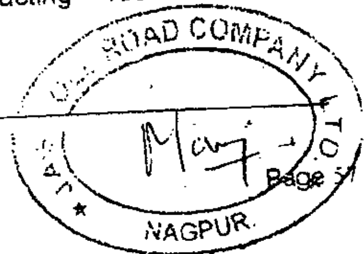
24.2 For the purposes of claiming disbursements on account of Revenue Shortfall loan pursuant to Clause 24.1 above in any Accounting Year, the Concessionaire shall:

(a) Submit a detailed account of the Indirect Political Event or the Political Event, as the case may be, and its impact on total revenues of the Concessionaire as soon as feasible and submit weekly reports thereafter;

(b) Provide to NHAI, the Schedule of Debt Service Payments under the Financing Documents for the Accounting year for which Revenue Shortfall Loan are claimed;

(c) Provide to NHAI the details of O&M Expense budget for such Accounting Year and the expenditure incurred in that year out of such budget;

(d) Within 15 (fifteen) days of the close of each Accounting Year in which the shortfall in the referred to in Clause 24.1 shall occur, provide a certificate from the Statutory Auditors of the Concessionaire certifying the Subsistence Revenue Level, the Realisable Fees and the Revenue Shortfall Loan requirement after deducting reserves of the Concessionaire, if any; and





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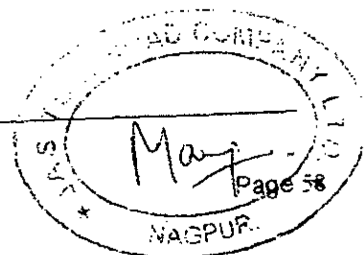
(e) Submit a written request to NHAI under the hands of a Director of the Concessionaire requesting for disbursement of the Revenue Shortfall Loan to the Concessionaire by payment thereof into the Escrow Account.

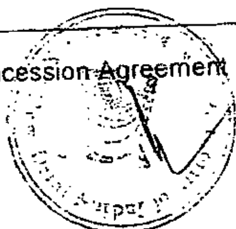
24.3 Upon the receipt of the request and documents as set forth in Clause 24.2 above and provided the same is not found by NHAI to be wrong or incorrect, NHAI shall disburse the Revenue Shortfall Loan within 30 days (thirty) thereof.

24.4 In the event Realisable Fees during the first six months of an Accounting Year shall fall as a result of an Indirect Political Event or a Political Event and the amount of such Realisable Fees is less than the Debt Service Payments due for the first six months of such Accounting Year, NHAI shall upon request provide an advance to the Concessionaire for meeting the shortfall in such Debt Service Payments. For claiming such advance, the Concessionaire shall make a demand to NHAI accompanied by a certificate from the Statutory Auditors setting forth the Realisable Fees during the first six months of the Accounting Year, the reserves of the Concessionaire and the outstanding amount on account of Debt Service Payments due in the first six months of such year. The Statutory Auditors shall also certify the amount of advance required by the Concessionaire from NHAI for meeting such Debt Service Payments after deducting such Realisable Fees and the reserves of the Concessionaire. Within 15 (fifteen) days of receiving such demand, NHAI shall disburse the advance due to the Concessionaire at an interest rate equal to SBI PLR. Not later than 15 (fifteen) days after completion of such Accounting Year, the Concessionaire shall either refund such advance with interest to NHAI or adjust it against such Revenue Shortfall Loan as may be due to the Concessionaire under this Article.

24.5 The Revenue Shortfall Loan disbursed by NHAI pursuant hereto and the interest thereon shall be repaid by the Concessionaire in a sum equal to 50% (fifty per cent) of the Net Cash flow of the Concessionaire as and when made and such repayments shall be made in one or more years as necessary.

24.6 Notwithstanding anything to the contrary contained in Clause 24.5, the Concessionaire shall repay the entire Revenue Shortfall Loan and interest thereon at least two years before the expiry of the Concession Period. If any sum remains due or outstanding from the Concessionaire under this Article XXIV at any time during a period of two years preceding the Termination Date, it shall constitute a Concessionaire Event of Default under Article XXXII and NHAI shall be entitled to Terminate this Agreement under Clause 32.2.





XXV. ESCROW ACCOUNT

25.1 The Concessionaire shall within 60 days from the date of this Agreement open and establish the Escrow Account with a Bank (the "Escrow Bank") and all funds constituting the Financing Package for meeting the Total Project Cost shall be credited to such Escrow Account. During Operations Period all Fees collected by the Concessionaire from the users of the Project Highway shall be exclusively deposited therein. In addition, all Fees collected by NHAI in exercise of its rights under this Agreement during the Concession Period and all disbursements or payments by NHAI pursuant hereto shall also, subject to the rights of deductions and appropriations therefrom of NHAI under this Agreement, be deposited by NHAI in the Escrow Account.

25.2 Disbursements from Escrow Account

25.2.1 The Concessionaire shall give, at the time of the opening of the Escrow Account, irrevocable instructions by way of an Escrow Agreement substantially in form set forth in Schedule `Q' (the "Escrow Agreement") to the Escrow Bank instructing, inter alia, that the deposits into the Escrow Account shall subject to Clause 25.2.3, be appropriated in the following order every month and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due unless otherwise expressly provided in the instruction letter:

(a) All taxes due and payable by the Concessionaire;

(b) All expenses in connection with and relevant to the Construction of Project Highway by way of payment to the EPC Contractor and such other persons as may be specified in the Financing Documents;

(c) O&M Expenses including Fees collection expenses incurred by the Concessionaire directly or through O&M Contractor and/or Tolling Contractor, if any, subject to the items and ceiling in respect thereof as set forth in the Financing Documents but not exceeding 1/12 (one twelth) of the annual liability on this account;

(d) The whole or part of the expense on repair work or O&M Expense including Fees collection expenses incurred by NHAI on account of exercise of any of its rights under this Agreement provided NHAI certifies to the Escrow Bank that NHAI had incurred such expenses in accordance with the provisions of this Agreement;

(e) All Concession Fees due to NHAI from the Concessionaire under this Agreement;

(f) Monthly proportionate provision of Debt Service Payments due in an Accounting Year and payment of Debt Service Payments in the month when due;

(g) Any payments and Damages due and payable by the Concessionaire to NHAI pursuant to this Agreement, including repayment of Revenue Shortfall Loans; and

(h) Balance in accordance with the instructions of the Concessionaire.

25.2.2 The Concessionaire shall not in any manner modify the order of payment specified in this clause 25.2 except with the prior written approval of NHAI.

25.2.3 In the event, the Grant, if any, to the Concessionaire shall exceed 10% of the Total Project Cost, all disbursements on account of Total Project Cost other than those to the EPC Contractor in accordance with the EPC Agreement, shall be made in accordance with the express provisions contained in that behalf in the Financing Documents. Provided, however, that if the total of such disbursements exceed 10% of the Total Project Cost, prior written consent of NHAI shall be required in respect of the disbursement arrangements for such excess amounts, and such consent shall not be unreasonably withheld by NHAI.

25.3 Notwithstanding anything to the contrary contained in the Escrow Agreement and subject to the provisions contained in Clauses 33.5 and Article XXXIV, upon Termination of this Agreement, all amounts standing to the credit of the Project Escrow Account shall be appropriated and dealt with in the following order:

(a) all Taxes due and payable by the Concessionaire;

(b) all Concession Fees due and payable to NHAI under this Agreement;

(c) all accrued Debt Service Payment;

(d) any payments and Damages due and payable by the Concessionaire to NHAI pursuant to this Agreement, including Termination claims and repayment of Revenue Shortfall Loans;

(e) all accrued O&M Expenses;

(f) any other payments required to be made under this Agreement; and

(g) balance, if any, on the instructions of the Concessionaire.

25.4 The instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.3 have been discharged.

XXVI STATE SUPPORT AGREEMENT

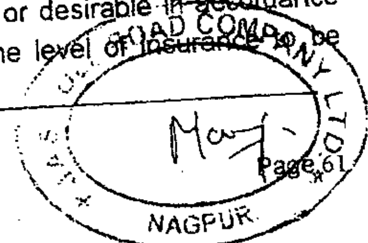
26.1 The Concessionaire acknowledges that for the performance of its obligations under this Agreement, it requires support and certain services from GOK. The nature and scope of such support and services required by the Concessionaire from GOK are fully described in the draft State Support Agreement set forth at Schedule 'R'.

26.2 The Concessionaire acknowledges its obligation to enter into the State Support Agreement and accordingly the Concessionaire agrees and undertakes to enter into at its cost and expense the State Support Agreement with NHAI and GOK substantially in form and content as set forth in Schedule 'R'.

XXVII. INSURANCE

27.1 Insurance during the Construction Period: The Concessionaire shall effect and maintain, or cause to be effected and maintained, at no cost to NHAI during the Construction Period such insurances upto such maximum sums as may be required under and in accordance with the Financing Documents, Applicable Laws and such insurance as the Concessionaire may reasonably consider necessary or desirable in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurance as may be necessary for mitigating the risks that may devolve on NHAI as a consequence of any act of omission by the Concessionaire during the Construction Period.

27.2 Insurance during the Operations Period: Not later than 4 months prior to the anticipated Completion of the Project Highway, the Concessionaire shall obtain and maintain at no cost to NHAI during the Operations Period in respect of the Project Highway and its operations such insurance as may be required under any of the Financing Documents, Applicable Laws and such insurance as the Concessionaire may reasonably consider necessary or desirable in accordance with Good Industry Practice. Provided, however, the level of insurance to be



maintained after satisfaction of Senior Lenders' dues in full, shall be determined on the same principles as applicable for determining the level of Insurance prior to such date. This level shall be agreed with NHAI within 120 days of date of this Agreement.

For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Concessionaire pursuant to this Article XXVII are herein referred to as the "Insurance Cover".

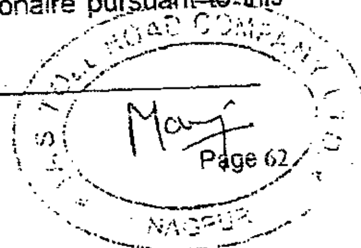
27.3 Evidence of Insurance Cover: All insurance obtained by the Concessionaire in accordance with this Article XXVII shall be maintained with insurer or reinsurers, and on terms consistent with Good Industry Practice. Within thirty days of obtaining any insurance cover, the Concessionaire shall furnish to NHAI, copies of certificates of insurance, copies of the insurance policies signed by an authorised representative of the insurer and copies of all premia payment receipts in respect of such insurance received from each insurance carrier, and such insurance will not be cancelled, changed or not renewed until the expiration of at least 45 (forty five) days after written notice of such cancellation, change of non-renewal has been received by NHAI.

27.4 Remedy on Failure to Insure: If the Concessionaire shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto, NHAI shall have the option to keep in force any such insurance, and pay such premia and recover the costs thereof from the Concessionaire, or for the purposes of computation of payments to the Concessionaire pursuant to Article XXIX treat the insurance cover i.e. the maximum sums which such insurance was providing for had it been in force and effect as being deemed to have been received by the Concessionaire.

27.5 Waiver of Subrogation: All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers thereunder against, inter alia, NHAI, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.

27.6 Concessionaire Waiver: The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the NHAI, and its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this





Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

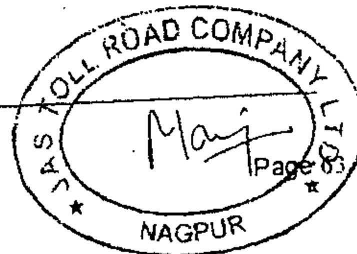
27.7 Application of Insurance Proceeds: The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account (unless otherwise required by the Financing Documents) who shall, subject to its obligations under the Financing Documents, and notwithstanding anything contained in Article XXV, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway.

XXVIII. ACCOUNTS AND AUDIT

28.1 The Concessionaire shall maintain full accounts of all Fees including Realisable Fees and other revenues derived/collected by it from and on account of use of the Project Highway and of O&M Expenses and other costs paid out of the Project Escrow Account and shall provide copies of the said accounts duly audited and certified by the Concessionaire's Statutory Auditors within 120 (one hundred twenty) days of the close of each Accounting Year to which they pertain, during the subsistence of this Agreement. Such audited accounts shall form the basis of various payn nts by either Party under this Agreement. The Concessionaire shall also furnish, within one week of its publication, a certified copy of the audited accounts and annual report published by the Company under the Applicable Laws.

28.2 The Concessionaire shall appoint and have during the subsistence of this Agreement a firm of Chartered Accountants, duly licensed to practice in India, as its Statutory Auditors under the provisions of the Companies Act, 1956. The Concessionaire and NHAI shall mutually agree upon a list of 10 (ten) independent and reputable firms of Chartered Accountants in India (the "List of Chartered Accountants") for the purpose of Clauses 28.4 and 28.5. The criteria for preparing the List of Chartered Accountants are set forth in Schedule 'T'.

28.3 On or before the fifteenth day of April each Year, the Concessionaire shall provide for the preceding Accounting Year a statement duly audited by its Statutory Auditors giving summarised vehicle/user wise information on (i) the traffic count for each category of vehicles using the Project Highway and liable for payment of Fees therefore, and (ii) Fees charged and the amount of Fees received, Realizable Fees and other revenues derived from the Project Highway and such other information as NHAI may reasonably require.



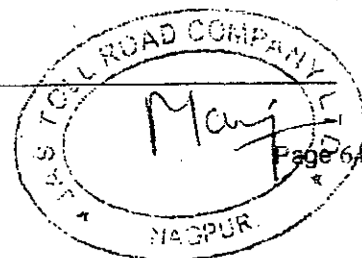


28.4 Notwithstanding anything to the contrary contained in this Agreement, NHAI shall have the right but not the obligation to appoint at its cost another firm of chartered accountants from the List of Chartered Accountants (the "Additional Auditor") to audit and verify all those matters, expense, costs, realisations and things which the Statutory Auditors of the Concessionaire, are required to do, undertake or certify pursuant to this Agreement.

28.5 Where a Grant has been provided, NHAI shall have the right to appoint for the duration of the Construction Period as Concurrent Auditor a firm of Chartered Accountants from the List of Chartered Accountants (the "Concurrent Auditor") who shall undertake concurrent audit of the Concessionaire during the Construction Period. The charges and expenses of such Concurrent Auditor shall be borne by the NHAI. After such Construction Period, NHAI may at its option have concurrent audit done at such time and for such period as NHAI may deem appropriate at its cost and expenses.

28.6 In the event of their being any difference between the finding of the Additional Auditor or the Concurrent Auditor, as the case may be, and the certification provided by the Statutory Auditors of the Concessionaire, such Auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved by recourse to the Dispute Resolution Procedure.





CHAPTER – VI
FORCE MAJEURE

XXIX. FORCE MAJEURE

29.1 Force Majeure Event: As used in this Agreement, a Force Majeure Event shall mean occurrence in India of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in Clauses 29.2, 29.3, and 29.4 respectively hereinafter which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money and (iii) has a Material Adverse Effect on the Project.

29.2 Non Political Force Majeure Events: For purposes of Clause 29.1 Non-Political Events shall mean one or more of the following acts or events:

(i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Site or beyond design specifications for the Construction Works) or landslide;

(ii) radioactive contamination or ionizing radiation;

(iii) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project Highway for a period exceeding a continuous period of 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 29.3 hereof;

(iv) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(v) Any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, c enforcement of this Agreement or exercise of any of its rights under this Agreement by NHAI; or

(vi) Any event or circumstance of a nature analogous to any of the foregoing.

29.3 Indirect Political Force Majeure Events: For purposes of Clause 29.1, indirect Political Event shall mean one or more of the following acts or events:

(i) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents collection of Fees by the Concessionaire for a period exceeding a continuous period of 7 (seven) days in an Accounting Year;

(ii) industry wide or state wide or India wide strikes or industrial action which prevent collection of Fees by the Concessionaire for a period exceeding a continuous period of 7 (seven) days in an Accounting Year; or

(iii) any public agitation which prevents collection of Fees by the Concessionaire for a period exceeding a continuous period of 7 (seven) days in an Accounting Year.

29.4 Political Force Majeure Events: For purposes of Clause 29.1, Political Event shall mean one or more of the following acts or events by or on account GOI, NHAI, GOK or any other Governmental Agency:

(i) Change in Law, only when provisions of Article XXXVI cannot be applied;

(ii) expropriation or compulsory acquisition by any Governmental Agency of any Project Assets or rights of the Concessionaire or of the Contractors; or

(iii) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent the obtaining of which is Condition Precedent) provided that such delay, modification, denial, refusal or revocation did not result from the

Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.

29.5 Effect of Force Majeure Event before Financial Close:. Upon the occurrence of any Force Majeure Event prior to Financial Close as set forth in Article XXII, the following shall apply:

(a) There shall be no Termination except as provided in Clause 29.8;

(b) The date for achieving Financial Close shall be extended by the period for which such Force Majeure event shall subsist; and

(c) The Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs arising out of such Force Majeure Event.

29.6 Effect of Force Majeure Event after Financial Close: Upon occurrence of any Force Majeure Event after Financial Close, the following shall apply:

(a) There shall be no Termination of this Agreement except as provided in Clause 29.8;

(b) Where the Force Majeure Event occurs before COD, the dates set forth in the Project Completion Schedule, and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;

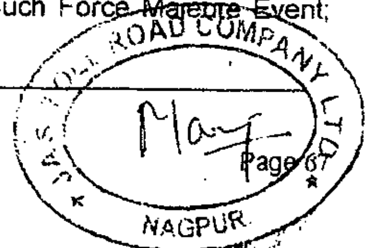
(c) Where a Force Majeure Event occurs after COD, the Concessionaire shall continue to make all reasonable efforts to collect Fees, but if he is unable to collect Fees during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the period for which collection of Fees remains suspended on account thereof; and

(d) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of Clause 29.7.

29.7 Allocation of costs during subsistence of Force Majeure: Subject to the provisions of clause 29.6, upon occurrence of a Force Majeure Event after Financial Close, the costs arising out of such event shall be allocated as follows:

(a) When the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;





(b) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the "Force Majeure Costs") shall be borne by the Concessionaire to the extent of the Insurance Claims, and to the extent such Force Majeure Costs exceed the Insurance Claims , one half of the same to the extent actually incurred and duly certified by the statutory Auditors of Concessionaire shall be reimbursed by NHAI to the Concessionaire in one lump sum or paid in three equal annual installments with interest @ SBI PLR plus two percent; and

(c) Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and certified by the Statutory Auditors of Concessionaire shall be reimbursed by NHAI to the Concessionaire in one lump sum or paid in three equal annual installments with interest @ SBI PLR plus two percent, provided that no Force Majeure Costs shall be payable by NHAI if the Concession Period is increased under Clause 29.6.

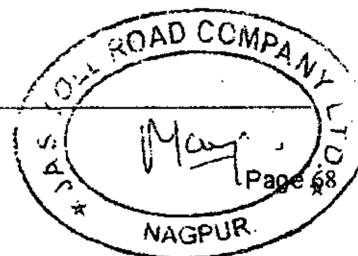
For avoidance of doubt, Force Majeure Costs shall not include loss of Fee revenues or any debt repayment obligations but shall include interest payments on such debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event.

29.8 Termination Notice: If a Force Majeure Event subsists for a period of 180 (one hundred eighty) days or more within a continuous period of 365 (three hundred sixty five) days, either Party may in its sole discretion terminate this Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever, save as provided in Clause 29.9.

29.9 Termination Payment for Force Majeure Events: Upon Termination of this Agreement pursuant to Clause 29.8, Termination Payment to the Concessionaire shall be made in accordance with the following:

(a) If the Termination is on account of a Non Political Event, the Concessionaire shall be entitled to receive from NHAI by way of Termination Payment an amount equal to 90% of the Debt Due and the entire Subordinated Debt less due insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 90% of such claims shall qualify for being included in the computation of Debt Due.





(b) If the Termination is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive from NHAI by way of Termination Payment an amount equal to:

(i) the total Debt Due, less due insurance claims, if any. Provided, however, that if all or any of the insurance claims are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall qualify for being included in the computation of Debt Due, plus

(ii) the outstanding Subordinated Debt, plus

(iii) 110% (one hundred ten per cent) of the Equity (subscribed in cash and actually spent on the Project but excluding the amount of Equity Support referred to in Article XXIII) if such Termination occurs at any time during three years commencing from the Appointed Date and for each successive years thereafter, such amount shall be adjusted every year to fully reflect the changes in WPI during such year, and the adjusted amount so arrived at shall be reduced every year by 7.5% (seven and half per cent) per annum.

(c) If the Termination of this Agreement is on account of a Political Event, the Concessionaire shall be entitled to receive from NHAI by way of Termination Payment an amount equal to:

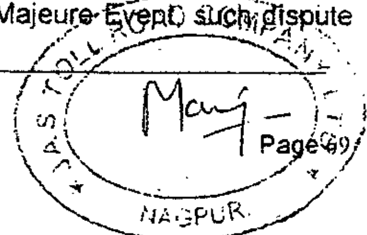
(i) the total Debt Due, plus

(ii) 120% (one hundred twenty per cent) of the Subordinated Debt plus

(iii) 150% (one hundred fifty per cent) of the Equity (subscribed in cash and actually spent on the project but excluding the amount of Equity Support referred to in Article XXIII) the if such Termination occurs at any time during three years commencing from the Appointed Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in WPI during such year, and the adjusted amount so arrived at shall be reduced every year by 7.5% (seven and half per cent) per annum.

29.10 Dispute Resolution: In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such dispute





shall be finally settled in accordance with the Dispute Resolution Procedure, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

29.11 Liability for other losses, damages etc: Save and except as expressly provided in this Article XXIX, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article XXIX.

29.12 Duty to Report: The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

(a) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

(b) Any notice pursuant to this Clause 29.12 shall include full particulars of:

(i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article XXIX with evidence in support thereof;

(ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(iii) the measures which the Affected Party is taking or proposes to take, to alleviate the impact of such Force Majeure Event; and

(iv) any other information relevant to the Affected Party's claim.

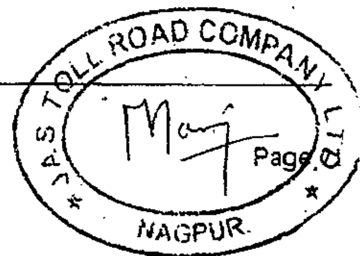
(c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Clause 29.12, and such other information as the other Party may reasonably request the Affected Party to provide.

29.13 Excuse from performance of obligations: If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event provided that:

(a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence, and

(c) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

CHAPTER – VII
SUSPENSION AND TERMINATION

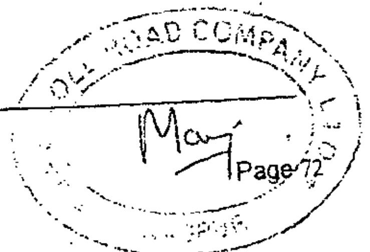
XXX. MATERIAL BREACH AND SUSPENSION

30.1 If the Concessionaire shall be in Material Breach of this Agreement NHAI, shall be entitled in its sole discretion and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to (i) suspend all or any of the rights of the Concessionaire under this Agreement including the Concessionaire's right to collect and appropriate all Fees and other revenues from the Project Highway, and (ii) exercise the rights of the Concessionaire under this Agreement itself or authorise any other person to exercise the same during such suspension. Such suspension by NHAI shall be by a communication in writing to the Concessionaire and shall be effective forthwith upon the issue thereof to the Concessionaire. Any Fees or revenues collected by or on behalf of NHAI during such suspension shall be deposited in the Escrow Account to the exclusion of the Concessionaire. Provided, however, that the period of such suspension under this Article XXX shall not exceed 120 (one hundred twenty) days.

30.2 Subject to clause 30.1, NHAI shall have the right to utilise the proceeds of Fees and other revenues for meeting the costs incurred by NHAI to remedy and rectify the cause of such suspension and for defraying the O&M Expenses during such suspension period. Provided, however, that if the Concessionaire is making diligent efforts to remedy and rectify such cause, then NHAI shall allow the Concessionaire reasonable time and opportunity for such remedy or rectification.

30.3 The suspension of the rights of the Concessionaire by NHAI pursuant to Clause 30.1 above shall be revoked by NHAI forthwith upon the Concessionaire having remedied the Material Breach during such suspension period to the satisfaction of NHAI unless in the meantime this Agreement has been terminated by NHAI in accordance with Article XXXII.

30.4 At any time during the period of suspension under this Article XXX, the Concessionaire may in writing notify to NHAI that it does not intend to cure the breach or default that h[illegible] caused such suspension. Within 7 (seven) days of receipt of such notice, NHAI shall terminate this Agreement as if a Material Breach of this Agreement had occurred on account of a Concessionaire Event of Default.





XXXI. COMPENSATION FOR BREACH OF AGREEMENT

31.1 In the event of Concessionaire being in material default of this Agreement and such default is cured before Termination, the Concessionaire shall pay to NHAI as compensation, all direct additional costs suffered or incurred by NHAI arising out of such material default by the Concessionaire, in one lumpsum within 30 (thirty) days of receiving the demand or at the Concessionaire's option in 3 (three) equal semi-annual installments with interest @ SBI PLR plus 2% (two per cent).

31.2 In the event of NHAI being in material default of this Agreement and such default is cured before Termination, NHAI shall pay to the Concessionaire as compensation, all direct additional costs suffered or incurred by the Concessionaire arising out of such material default by NHAI, in one lumpsum within 30 (thirty) days of receiving the demand or at NHAI's option in 3 (three) equal semi-annual installments with interest @ SBI PLR plus 2% (two per cent).

XXXII. TERMINATION

32.1 Termination for the Concessionaire Event of Default.

32.1.1 Concessionaire Event of Default

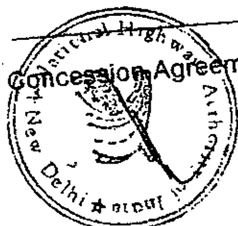
The following events shall constitute an event of default by the Concessionaire (a "Concessionaire Event of Default") unless such Concessionaire Event of Default has occurred as a result of NHAI Event of Default or a Force Majeure Event;

(1) The Concessionaire fails to achieve Financial Close in accordance with the provisions of Article XXII;

(2) The Concessionaire fails to achieve any Project milestone other than Scheduled Project Completion Date within the period set forth in Schedule 'H' and fails to cure such default within a period of 180 (one hundred and eighty) days from the date of its occurrence.

(3) The Concessionaire is in Material Breach of this Agreement;

(4) The Concessionaire commits default in complying with any of the terms and conditions of this Agreement, save and except those defaults in respect of which Cure Period has been expressly



provided in this Agreement and fails to remedy or rectify the same within the period provided in a notice in this behalf from NHAI which shall:

(i) require the Concessionaire to remedy the breach or breaches referred to in such notice within 1 (one) month (or such longer period as may be agreed by the NHAI at its absolute discretion); or

(ii) permit the Concessionaire to put forward within 15 days of such notice a reasonable programme for the remedying of the breach or breaches, such programme to specify in reasonable detail the manner in which such breach or breaches is or are proposed to be remedied and the latest date by which it is proposed that such breach or all such breaches shall be remedied.

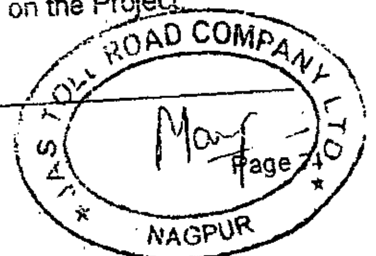
(5) The Concessionaire creates any Encumbrance, charges or lien in favour of any person save and except as otherwise expressly permitted under Clause 35.2;

(6) The shareholding of the Consortium Members falls below the minimum prescribed under Clause 11.1 (xiii) and the Concessionaire does not suo moto cure such default within 90 (ninety) days of its occurrence;

(7) The transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (b) all or material part of the assets or undertaking of the Concessionaire except where such transfer in the reasonable opinion of NHAI does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform, its material obligations under the Project Agreements;

(8) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;

(9) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;





(10) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided that:

(i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Financial Close; and

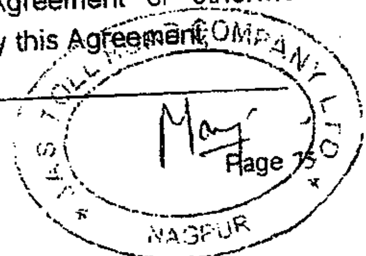
(iii) each of the Project Agreements remains in full force and effect;

(11) The Concessionaire is in Material Breach of any of the Project Agreements;

(12) An event of default of the Concessionaire under any of the Financing Documents has occurred or any of the Senior Lenders has recalled its loan under any of the Financing Documents;

(13) The Concessionaire abandons the operations of the Project Highway for more than 15 (fifteen) consecutive days without the prior consent of NHAI, provided that the Concessionaire shall be deemed not to have abandoned such operation if such abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations by NHAI.

(14) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;





(15) The Concessionaire suffers an execution being levied on any of its assets/ equipment causing a Material Adverse Effect on the Project and allows it to be continued for a period of 15 (fifteen) days;

(16) The Concessionaire has delayed any payment that has fallen due under this Agreement if such delay exceeds 90 (ninety) days; or

(17) The Concessionaire is in breach of its obligation to repay the Revenue Shortfall Loans in accordance this Agreement.

32.1.2 Save and except as otherwise provided in Clause 32.2, and without prejudice to any other right or remedy which NHAI may have in respect thereof under this Agreement, upon the occurrence of any breach or default by the Concessionaire under this Agreement including any Concessionaire Event of Default, NHAI shall be entitled to terminate this Agreement by a communication in writing (the "Termination Notice") to the Concessionaire if the Concessionaire has failed to cure such breach or default within the period provided for the same in this Agreement provided that before issuing the Termination Notice, NHAI shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice") and grant 15 (fifteen) days time to the Concessionaire to make its representation, if any, against such intended Termination Notice and shall after the expiry of said 15 (fifteen) day period whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

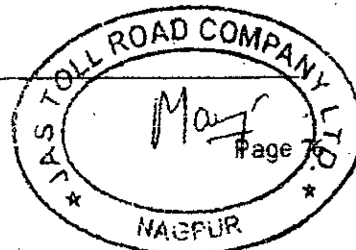
32.1.3 Subject to Clause 32.2, the following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement.

(i) The Cure Period shall commence from the date on which a notice in writing is delivered by NHAI to the Concessionaire asking the latter to cure the breach or default specified in such notice.

(ii) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for Damages caused by its breach or default;

(iii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;





(iv) If the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by NHAI or the Independent Engineer hereunder the applicable Cure Period (and any liability of the Concessionaire for damages incurred) shall be extended by the period taken by NHAI or the Independent Engineer to accord their required approval.

32.2 Notwithstanding anything to the contrary contained in this Agreement, in the event of the Concessionaire being in default under any of the provisions hereof expressly providing for Termination under or in accordance with this Clause 32.2, NHAI shall be entitled to terminate this Agreement forthwith by issuing a Termination Notice to the Concessionaire and upon issue of such Termination Notice by NHAI this Agreement shall stand terminated forthwith. Provided, however, that prior to such Termination, NHAI shall by notice grant to the Concessionaire a Cure Period of one month for curing the relevant breach or default of the provisions of this Agreement.

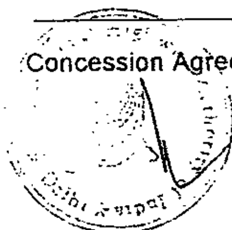
32.3 Upon Termination by NHAI on account of occurrence of Concessionaire Event of Default during the Operations Period, the NHAI shall pay to the Concessionaire by way of Termination Payment an amount equal to 90% (ninety per cent) of the Debt Due less insurance claims, if any, provided, however, that if all or any of the insurance claims are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall qualify for being included in the computation of Debt Due.

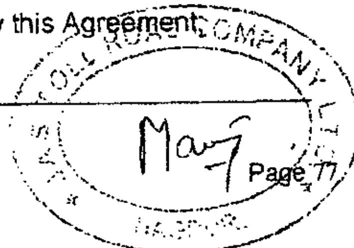
32.4 Termination for NHAI Event of Default.

32.4.1 The Concessionaire may after giving 90 (ninety) days notice in writing to NHAI terminate this Agreement upon the occurrence and continuation of any of the following events (each a "NHAI Event of Default"), unless any such NHAI Event of Default has occurred as a result of Concessionaire Event of Default or due to a Force Majeure Event.

(1) NHAI is in breach of this Agreement and such breach has a Material Adverse Effect on the Concessionaire and NHAI has failed to cure such breach or take effective steps for curing such breach within 90 (ninety) days of receipt of notice in this behalf from the Concessionaire;

(2) NHAI repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement;





(3) GoI or GOK or any Governmental Agency have by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and have failed to cure the same within 90 (ninety) days of receipt of notice by NHAI in this behalf from the Concessionaire;

(4) NHAI has delayed any payment that has fallen due under this Agreement if such delay exceeds 90 (ninety) days.

32.4.2 Upon Termination on account of an NHAI Event of Default, the Concessionaire shall be entitled to receive from NHAI by way of Termination Payment a sum equal to:

(i) the total Debt Due, plus

(ii) 120% (one hundred twenty percent)the total Subordinated Debt, plus

(iii) 150% (one hundred fifty per cent) of the Equity (subscribed in cash and actually spent on the Project but excluding the amount of Equity Support referred to in Article XXIII) if such Termination occurs at any time during three years commencing from the Appointed Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in WPI during such year and the adjusted amount so arrived at shall be reduced every year by 7.5% (seven and a half per cent) per annum.

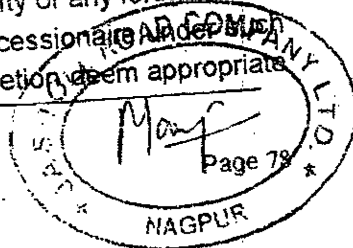
32.5 Upon Termination of this Agreement for any reason whatsoever, NHAI shall:

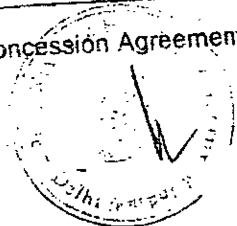
(j) take possession and control of Project Highway forthwith:

(iii) take possession and control forthwith of any materials, construction plant, implements, stores etc. on or about the Site;

(iv) restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project Highway; and/or

(v) succeed upon election by NHAI without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreement as NHAI may in its discretion deem appropriate





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and shall upon such election be required to compensate such contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date NHAI elects to succeed to the interests of the Concessionaire as aforesaid. All sums claimed by such Contractors as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors and NHAI shall in no way or manner be liable or responsible for such sums.

32.6 Termination Payments: The Termination Payment pursuant to this Agreement shall become due and payable to the Concessionaire by NHAI within thirty days of a demand being made by the Concessionaire with the necessary particulars duly certified by the Statutory Auditors. If NHAI fails to disburse the full Termination Payment within 30 (thirty) days, the amount remaining unpaid shall be disbursed along with interest @ SBI PLR plus two per cent for the period of delay on such amount.

32.7 Mode of Payment: Payment of compensation of costs by NHAI pursuant to this Article XXXII shall be made by way of credit to the Escrow Account and such payment shall constitute valid discharge of NHAI's obligations for Termination Payment hereunder.

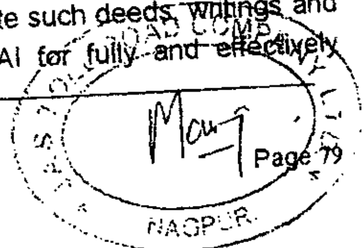
32.8 Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of either Party under this Agreement, including without limitation Termination Payments and Divestment procedures, shall survive the Termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

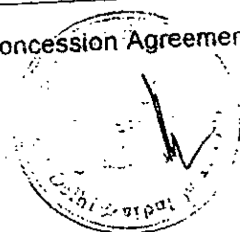
XXXIII. DIVESTMENT OF RIGHTS AND INTERESTS

33.1 Upon Termination of this Agreement, the Concessionaire shall comply with the following:

(a) notify to NHAI forthwith the location and particulars of all Project Assets;

(b) deliver forthwith actual or constructive possession of the Project Highway free and clear of all Encumbrances and execute such deeds, writings and documents as may be required by the NHAI for fully and effectively





divesting the Concessionaire of all of the rights, title and interest of the Concessionaire in the Project Highway and conveying the Project Highway free of any charge or cost to NHAI; and

(c) comply with the Divestment Requirements set out in Clause 33.2.

33.2 Upon Termination of this Agreement, except in case of Non Political Force Majeure, where divestment requirements shall be mutually agreed, the Concessionaire shall comply and conform to the following Divestment Requirements in respect of the Project Highway:

(i) all Project Assets including the road, pavement, structure and equipment shall have been renewed and cured of all defects and deficiencies as the necessary so that the Project Highway is compliant with the Specifications and Standards set forth in this Agreement;

(ii) all sections of each traffic lane (the "Carriageway") of the Project Highway shall have a roughness index of not more than 2500 mm per km and shall be free from defects in accordance with O&M requirements;

(iii) all lamps shall be in working condition;

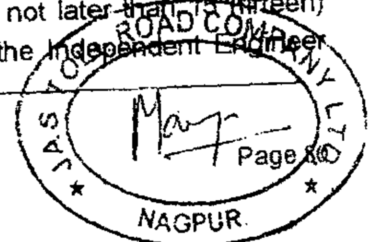
(iv) the Concessionaire delivers relevant records and reports pertaining to the Project Highway and its design, engineering, construction, operation, and maintenance including all operation and maintenance records and programmes and manuals pertaining thereto and complete as built Drawings on the Divestment Date;

(v) the Concessionaire executes such deeds of conveyance, documents and other writings as the NHAI may reasonably require to convey, divest and assign all the rights, title and interest of the Concessionaire in the Project Highway free from all Encumbrances absolutely and free of any charge or tax unto the NHAI or its Nominee; and

(vi) the Concessionaire complies with all other requirements as may be prescribed under Applicable Laws to complete the divestment and assignment of all the rights, title and interest of the Concessionaire in the Project Highway free from all Encumbrances absolutely and free of any charge or tax to NHAI or its nominee.

33.3 Not earlier than 3 (three) months before the expiry of the Concession Period but not later than 30 (thirty) days before such expiry, or in the event of earlier Termination of this Agreement, immediately upon but not later than 15 (fifteen) days from the date of issue of Termination Notice, the Independent Engineer

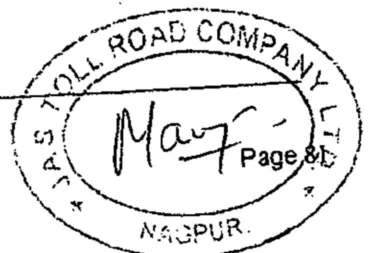




shall verify, in the presence of a representative of the Concessionaire, compliance by the Concessionaire with the Divestment Requirements set forth in Clause 33.2 in relation to the Project Highway and, if required, cause appropriate tests to be carried out at the Concessionaire's cost for determining the compliance therewith. If any shortcomings in the Divestment Requirements are found by either Party, it shall notify the other of the same and the Concessionaire shall rectify the same at its cost. The provisions of Article XXXIV shall apply mutatis mutandis in relation to repair or curing of defects under this Article XXXIII.

33.4 Upon the Concessionaire conforming to all Divestment Requirements and handing over actual or constructive possession of the Project Highway to NHAI or a person nominated by NHAI in this regard, NHAI shall issue a certificate substantially in the form set forth in Schedule 'V' (the "Vesting Certificate") which will have the effect of constituting evidence of divestment of all rights, title and lien in the Project Highway by the Concessionaire and their vesting in NHAI pursuant hereto. Issue of the Vesting Certificate shall not be unreasonably withheld by NHAI. The divestment of all rights, title and lien in the Project Highway shall be deemed to be complete on the date when all the Divestment Requirements have been fulfilled or the Vesting Certificate has been issued, whichever is earlier, it being expressly agreed that any defect or deficiency in any Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by NHAI or its nominee on or in respect of the Project Highway on the footing as if all Divestment Requirements have been complied with by the Concessionaire.

33.5 Notwithstanding anything to the contrary contained in this Agreement, any Termination Payments made by NHAI into the Escrow Account shall not be withdrawn therefrom for any purpose whatsoever until the Vesting Certificate has been issued by NHAI under this Article. Provided, however, that the aforesaid restriction shall not apply to withdrawals from the Escrow Account in favour of the Senior Lenders to the extent of Debt Due.





CHAPTER – VIII
MISCELLANEOUS

XXXIV.DEFECTS LIABILITY

34.1 Not less than 30 months nor more than 36 months prior to the expiry of the Concession Period, the Concessionaire and the Independent Engineer shall conduct a joint inspection (the "Initial Inspection") of the Project Highway and all Project Facilities.

34.2 Within 90 days after the completion of the Initial Inspection, the Concessionaire shall provide to the Independent Engineer a report on the condition of the Project Highway and the Project Facilities and a notice setting out the Concessionaire's proposals as to the renewal works required to comply with the Divestment Requirements.

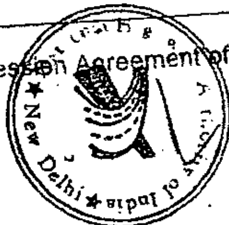
34.3 The Independent Engineer may, within 90 days after receipt of the notice from the Concessionaire in accordance with Clause 34.2, by notice to the Concessionaire object to the proposals giving details of the grounds for such objection and shall give the Independent Engineer's proposals in respect of the renewal works.

34.4 If no agreement is reached between the Concessionaire and the Independent Engineer within 30 days of receipt of such notice, then either the Concessionaire or the Independent Engineer may refer the matter to the Disputes Resolution Procedure.

34.5 Upon agreement or determination in accordance with the Disputes Resolution Procedure, the Concessionaire shall carry out the renewal works at its own cost.

34.6 Not less than 9 months nor more than 12 months prior to the expiry of the Concession Period, the Concessionaire and the Independent Engineer shall conduct a joint inspection (the "Second Inspection") of all elements of the Project Highway and Project Facilities (whether or not the Renewal Works have been carried out).

34.7 Within 30 days after the completion of the Second Inspection, the Concessionaire shall provide to the Independent Engineer a report on the condition of the Project Highway and Project Facilities and a notice setting out any revisions or additions to the renewal works required in order to ensure compliance with the Divestment Requirements.



34.8 The Independent Engineer may, within 30 days after receipt of the notice from the Concessionaire in accordance with Clause 34.7, by notice to the Concessionaire object to the proposed revisions giving details of the grounds for such objection and the Concessionaire shall give the Independent Engineer proposals in respect of such matters.

34.9 If no agreement is reached between the Concessionaire and the Independent Engineer within 30 days of receipt of such notice, then either the Concessionaire or the Independent Engineer may refer the matter to the Dispute Resolution Procedure.

34.10 Upon agreement or determination in accordance with the Disputes Resolution Procedure, the Concessionaire shall carry out the renewal works (as so revised) at its own cost.

34.11 From the date which is 2 years prior to the expiry of the Concession Period a sum equal to the Fees realisable during the last two years of the Concession Period for a traffic volume calculated at the rate of 10,000 (ten thousand) PCUs per day per year or a higher sum estimated by the Independent Engineer for Renewal Works, shall notwithstanding anything to the contrary contained in this Agreement, be retained in the Escrow Account provided that if a Bank Guarantee of an equivalent sum in the form and content acceptable to NHAI has been furnished by the Concessionaire to NHAI, no such retention shall be made.

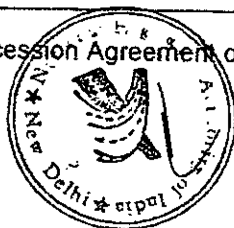
34.12 If following the Second Inspection, it is agreed or determined that no renewal works are required, then within 14 days of such agreement, 50% of the sums retained in accordance with Clause 34.11 shall be released from the Escrow Account to the Concessionaire.

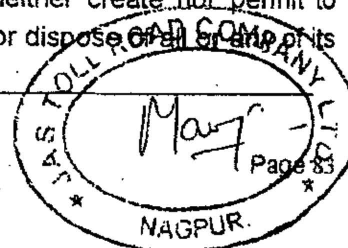
34.13 Within 14 days after the issue of the Vesting Certificate issued in accordance with Article XXXIII the sums retained in accordance with Clause 34.11shall be released from the Escrow Account to the Concessionaire.

XXXV. ASSIGNMENTS AND CHARGES

35.1 Subject to Clauses 35.3 and 35.4, this Agreement shall not be assigned by the Concessionaire save and except with prior consent in writing of NHAI, which consent NHAI shall be entitled to decline without assigning any reason whatsoever.

35.2 Subject to Clause 35.3, the Concessionaire shall neither create nor permit to subsist any encumbrance over or otherwise transfer or dispose of all or any of its





rights and benefits under this Agreement or any Project Agreements to which Concessionaire is a party except with prior consent in writing of NHAI, which consent NHAI shall be entitled to decline without assigning any reason whatsoever.

35.3 Restraint set forth in Clauses 35.1 and 35.2 shall not apply to:

(i) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project Highway;

(ii) mortgages/pledges/hypothecation of goods/assets other than Project Assets, and those covered by the Substitution Agreement and their related documents of title arising or created in the ordinary course of business of the Project Highway and as security only for indebtedness to the Senior Lenders under the Financing Documents and/or for working capital arrangements for the Project Highway;

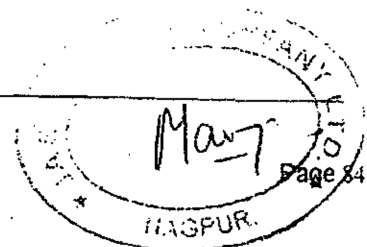
(iii) assignment of rights, title and interest to or in favour of the Lenders pursuant to and in accordance with the Substitution Agreement in respect of financing by the Senior Lenders under the Financing Documents for the Project; and

(iv) liens or encumbrances required by any Applicable Law.

35.4 Senior Lenders may exercise the rights of step-in or substitution as provided in the Substitution Agreement to be entered into among the Concessionaire, NHAI and Senior Lenders in the form set forth in Schedule 'U' provided that the person substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations under this Agreement as if it were the Concessionaire. Provided, however, that in the event of such step-in or substitution, an additional Cure Period of 90 (ninety) days shall be provided by NHAI to enable the Concessionaire to cure any breach or default subsisting on the day of such step-in or substitution. Provided further that if the Senior Lenders step in to operate and manage the Concession for a period not exceeding 90 (ninety) days, their liabilities shall be restricted to the obligations relating to and arising during such 90 (ninety) days period.

35.5 Notwithstanding anything to the contrary contained in this Agreement NHAI may assign any of its rights and benefits and/or obligations under this Agreement pursuant to any direction of GOI or by operation of law or in the course of its own business.





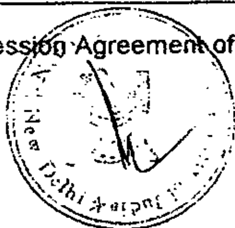
XXXVI. CHANGE IN LAW

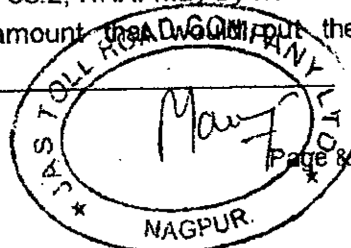
36.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after tax return or other financial burden, the aggregate financial effect of which exceeds Rs.5 million (Rupees five million) in any Accounting Year, the Concessionaire may notify NHAI and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. Upon notification by the Concessionaire as aforesaid, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days and either agree on amendments to this Agreement or on alternative arrangements to implement the foregoing.

Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to this Clause 36.1, the Concessionaire may by notice in writing require NHAI to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been so such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the Statutory Auditors of the Concessionaire. NHAI shall make payment of such compensation within 15 (fifteen) days of receiving such notice or with interest @ SBI PLR if the payment thereof is delayed beyond such 15 (fifteen) days. If NHAI shall dispute the quantum of such compensation claim of the Concessionaire, the same shall be finally settled in accordance with the Dispute Resolution Procedure.

36.2 If as a result of Change in Law, the Concessionaire enjoys a reduction in costs or increase in net after tax return or other financial benefit, the aggregate financial effect of which exceeds Rs.10 million (Rupees ten million) in any Accounting Year, NHAI may so notify the Concessionaire and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been so such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Upon notification by the NHAI as aforesaid, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days and either agree on such amendments to this Agreement or on alternative arrangements to implement the foregoing.

Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to this Clause 36.2, NHAI may by notice in writing require the Concessionaire to pay an amount that would put the





Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the NHAI Representative. The Concessionaire shall make such payment within 15 (fifteen) days of receiving such notice or with interest @ SBI PLR if the payment is delayed beyond such 15 (fifteen) days. If the Concessionaire shall dispute such claim of NHAI, the same shall be finally settled in accordance with the Dispute Resolution Procedure.

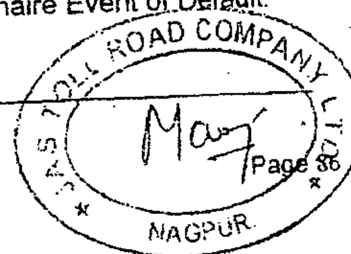
36.3 Notwithstanding anything to the contrary contained in this Agreement, NHAI shall not be liable to reimburse to the Concessionaire any sums on account of any Change in Taxes if the same are recoverable from the users of the Project Highway or if the aggregate financial effect of such changes in any Accounting Year is less than or equal to Rs.10 million (Rupees ten million).

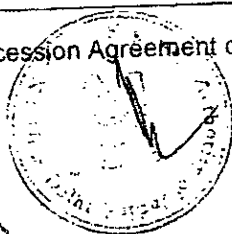
XXXVII. LIABILITY AND INDEMNITY

37.1 General Indemnity

(i) The Concessionaire will indemnify, defend and hold NHAI harmless against any and all proceedings, actions and, third party claims other than a claim by NHAI or GOI for loss, damage and expense of whatever kind and nature arising out of the design, engineering, construction, procurement, Operation and Maintenance of the Project Highway or arising out of a breach by Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to NHAI Event of Default.

(ii) NHAI will, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of NHAI in the land comprised in the Site adversely affecting the performance of the Concessionaire's obligations under this Agreement and/or arising out of acts done in discharge of their lawful functions by NHAI, its Officers, servants, agents, subsidiaries and contractors ("NHAI Indemnified Persons") including NHAI Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Concessionaire, its Subsidiaries, affiliates, contractors, servants or agents including due to Concessionaire Event of Default.





37.2 Without limiting the generality of Clause 37.1 the Concessionaire shall fully indemnify, save harmless and defend NHAI including its officers, servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Ap.licable Permits, (b) payments of taxes relating to the Concessionaire contractors, suppliers and representatives, income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its contractors.

37.3 Without limiting the generality of the provisions of this Article XXXVII, the Concessionaire shall fully indemnify, save harmless and defend the NHAI indemnified Person from and against any and all damages which the NHAI Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information , design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for NHAI a licence, at no cost to NHAI, authoring continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense and without impairing the specifications and standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.

37.4 In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article XXXVII (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the

name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

37.5 Defence of Claims

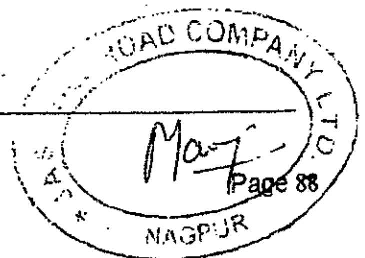
37.5.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article XXXVII, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure, the loss to be indemnified hereunder to the extent so compromised or settled.

37.5.2 If the Indemnifying Party has exercised its rights under Clause 37.4, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

37.5.3 If the Indemnifying Party exercises its rights under Clause 37.4 then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:

(i) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or





(ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

(iii) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(a) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(b) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement;

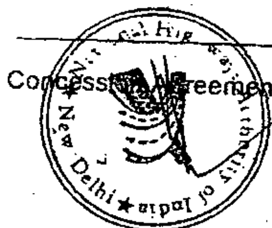
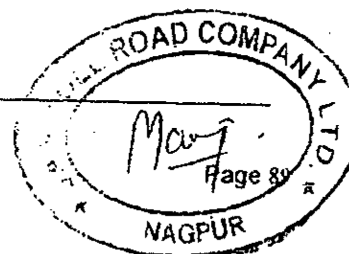
provided that if clauses (ii), (iii) or (iv) shall be applicable, counsel for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

XXXVIII. RIGHTS AND TITLE OVER THE SITE

38.1 The Concessionaire shall have exclusive rights to the use of the Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the Project Highway by third parties.

38.2 The Concessionaire shall allow access to, and use of the Site for telegraph lines, electric lines or such other public purposes as NHAI may specify. Where such access or use causes any damage to the Project Highway and consequent financial loss to the Concessionaire, it may seek compensation or damages from such user of the Site as per Applicable Laws.

38.3 The Concessionaire shall not be liable to pay any property taxes for the Site.

38.4 For the purposes of claiming tax depreciation, the property representing the capital investment made by the Concessionaire shall be deemed to be acquired and owned by the Concessionaire.

38.5 The Concessionaire shall not sublet the whole or any part of the Site save and except as may be expressly set forth in this Agreement provided however that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project Highway including Project Facilities.

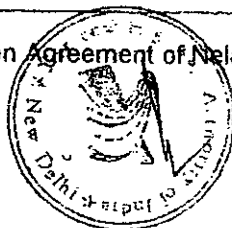
XXXIX. DISPUTE RESOLUTION

39.1 Amicable Resolution

(a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including incompletion of the Project Highway between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Sub-clause (b) below.

(b) In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of NHAI and the Chairman of the Board or Directors of the Concessionaire, for the time being for amicable settlement. Upon such reference, the said two Chairmen shall meet not later than 7 (seven) days of the date of such request to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the said two Chairmen, either Party may refer the dispute to arbitration in accordance with the provisions of Clause 39.2.

(c) If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the provisions of Clause 39.2 shall apply.





39.2 Arbitration

39.2.1 Any Dispute, which is not resolved amicably as provided in Clause 39.1 shall be finally decided by reference to arbitration by a Board of Arbitrators, appointed pursuant to Clause 39.2.2 below. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to the provisions of the Arbitration Act.

39.2.2 There shall be a Board of three arbitrators of whom each party shall select one and the third arbitrator shall be appointed in accordance with the Rules of Arbitration of the Indian Council of Arbitration.

39.2.3 The arbitrators shall issue a reasoned Award.

39.2.4 The venue of such arbitration shall be New Delhi, India.

39.3 Arbitration Awards to be Binding

39.3.1. The Concessionaire and NHAI undertake to carry out any decision or award of the arbitrators (the "Award") without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

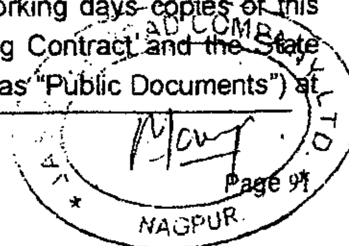
39.3.2 The Concessionaire and NHAI agree that an Award may be enforced against the Concessionaire and/or NHAI, as the case may be and their respective assets wherever situated.

39.3.3 This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.

XL. DISCLOSURE

40.1 The Concessionaire shall make available for inspection by members of public free of charge during normal business hours on all working days copies of this Concession Agreement, the O&M Contract, the Tolling Contract and the State Support Agreement (hereinafter collectively referred to as "Public Documents") at





the Concessionaire's Site office during the subsistence of this Agreement. The Concessionaire shall prominently display at the Toll Plazas public notices about the availability of the Public Documents for inspection and shall make available upon request and payment in advance of copying charges on no profit no loss basis to members of public copies of the said Public Documents.

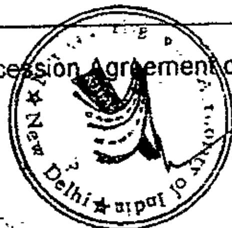
XLI. REDRESSAL OF PUBLIC GRIEVANCES

41.1 The Concessionaire sha.. maintain a public relations office adjacent to each Toll Plaza and keep it open to public access at all times. At each such office, the Concessionaire shall open and maintain a register (the "Complaints Register") for recording of complaints by any person (the Complainant") at any time of the day. The availability of and access to such office and the Complaints Register shall be prominently displayed by the concessionaire at each Toll Plaza so as to bring it to the attention of all persons who are entering and exiting the Project Highway.

41.2 The Complaints Register shall be securely bound and kept in proper custody at the public relations office. Each page of the Register shall be duly numbered and each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered the Complainant shall be given a receipt by such office stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate columns including but not limited to the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Concessionaire thereon.

41.3 The Concessionaire shall inspect the Complaints Register at reasonable intervals and take prompt steps for redressal of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the 'Action taken' column of the Complaints Register and a suitable reply shall also be sent to the Complainant by post under a certificate of posting.

41.4 Within one week following the close of each calendar month, the Concessionaire shall send to NHAI a true photocopy of such pages of the Complaints Register on which any entries have been recorded of any Complaint on the Concessionaire during the course of such month. NHAI may in its discretion direct the concessionaire to take such further reasonable action as NHAI may deem appropriate for a fair and just redressal of any grievance. Where NHAI is of the opinion that the Complainant is entitled to any further redressal or compensation beyond what the Concessionaire is willing to provide, NHAI may refer the matter to the Consumer Redressal Forum having jurisdiction for its disposal in accordance with the provisions of the Consumer Protection Act, 1986.



XLII. ADVERTISING ON THE SITE

42.1 The Concessionaire shall not undertake or permit any form of Commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall be visible to a user of the Project Highway while driving on such Highway.

XLIII. GOVERNING LAW AND JURISDICTION

43.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at New Delhi, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

XLIV. MISCELANEOUS

44.1 Video Recording

During the Construction Period, the Concessionaire shall provide a video recording to NHAI every calendar quarter which will be compiled into a 3 (three) hour cassette, covering the construction of the Project Highway in that quarter. Such video recording shall be provided no later than fifteen days after the close of each quarter.

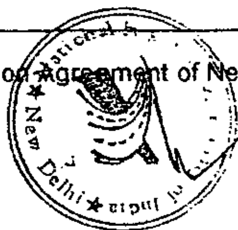
44.2 Waiver

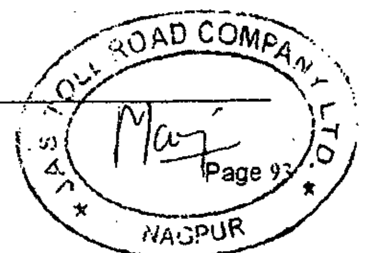
(a) Waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement.

(i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(ii) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(iii) shall not affect the validity or enforceability of this Agreement in any manner.





(b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

44.3 Survival

Termination of this Agreement (a) shall not relieve the Concessionaire or NHAI of any obligations hereunder which expressly or by implication survives Termination hereof, and (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such termination.

All obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 5 (five) years following the date of such Termination or expiry of this Agreement.

44.4 Entire Agreement:

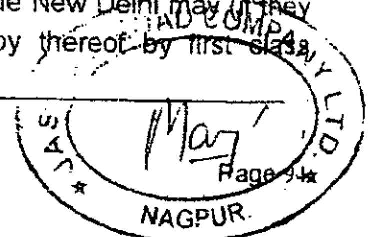
This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by NHAI and executed by the person expressly authorised by a resolution of NHAI in this behalf.

44.5 Notices

Any notice or other communication to be given by Party to the other Party under, or in connection with the matters contemplated by this Agreement shall be in writing and shall:

(a) in the case of the Concessionaire, be given by letter delivered by hand to the address given and marked for the attention of the person set out opposite the corresponding signature below or to such other address marked for such other attention as the Concessionaire may from time to time designate by notice to NHAI, provided that notices or other communications to be given to an address outside New Delhi may (if they are subsequently confirmed by sending a copy thereof by first class





registered airmail or by courier) be sent by facsimile to the number as the Concessionaire may from time to time designate by notice to NHAI; and

(b) in the case of NHAI, be given by letter delivered by hand and be addressed to the Chairman, NHAI. Copies of all notices shall also be sent by facsimile and by registered post or courier.Copies of all notices shall also be sent to the NHAI Representative.

44.6 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

44.7 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

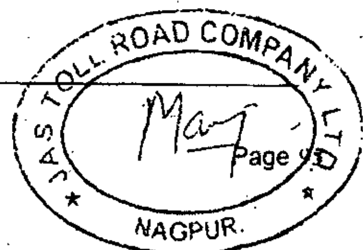
44.8 Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

44.9 Exclusion of Implied Warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.





44.10 Counterparts

This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

SIGNED SEALED AND DELIVERED

For and on behalf of

NATIONAL HIGHWAYS AUTHORITY OF INDIA

By ____________ (Signature) 28/6/01

B.K. TIWARI (Name)

G.M. (PI) KR (Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of

CONCESSIONAIRE by:

____________ (Signature)

MANOJ JAYASWAL (Name)

DIRECTOR (Designation)

in the presence of:

1. D. DASGUPTA, CHAIRMAN, NATIONAL HIGHWAYS AUTHORITY OF INDIA
2. N.K. SINHA, MEMBER (TECH), NHAI
3. SUDHIR GUPTA DGM (NADS), JAYASWALS NECO LIMITED